

**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.

R.13-12-010
(Filed Dec. 19, 2013)

COMMENTS OF SIERRA CLUB ON ORDER INSTITUTING RULEMAKING

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TABLE OF CONTENTS

INTRODUCTION	1
I. THE LTPP SHOULD CONTRIBUTE TO ACHIEVING CALIFORNIA’S CLIMATE AND ENVIRONMENT GOALS.	2
II. THE PHASE 1 AND PHASE 2 APPROACH IS APPROPRIATE, BUT THE BUNDLED PLANS SHOULD BE ADDRESSED AS PART OF OR IN CONJUNCTION WITH PHASE 2.	3
III. CEQA REVIEW WILL PROVIDE INSIGHT INTO THE PROCUREMENT AUTHORIZATION THAT THE COMMISSION ULTIMATELY ADOPTS.	5
IV. THE SAFETY CONSIDERATIONS SHOULD INCLUDE CONSIDERATION OF GLOBAL WARMING IMPACTS ON HEALTH AND SAFETY.	8
V. ALL LONG-TERM PROCUREMENT ANALYSIS AND AUTHORIZATION RELATED TO SDG&E SHOULD OCCUR IN THE PROCEEDING.	9
VI. COORDINATION WITH THE NEW RULEMAKING ON JOINT RELIABILITY PLAN NEEDS TO CLEARLY DELINEATE DECISION-MAKING IN THIS PROCEEDING.....	10
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster</i> (1997) 52 Cal.App.4th 1165	7
<i>Laurel Heights Improvement Assn. v. Regents of University of California</i> (1988) 47 Cal.3d 376	5
<i>Natural Res. Def. Council v. Arcata Nat'l Corp.</i> (1976) 59 Cal.App.3d 959	7
<i>No Oil, Inc. v. City of Los Angeles</i> (1974) 13 Cal.3d 68	7
<i>Pocket Protectors v. City of Sacramento</i> (2004) 124 Cal.App.4th 903	7
<i>Simi Valley Recreation & Park District v. Local Agency Formation Comm.</i> (1975) 51 Cal.App.3d 648	7
STATUTES	
Public Resources Code § 21000 et seq. (“CEQA”)	2, 6, 7
Pub. Resources Code § 21001(d).....	5
Pub. Resources Code § 21002	6
Pub. Resources Code § 21065	6
Pub. Resources Code § 21080(a).....	5
Pub. Resources Code § 21081(a).....	6
Pub. Utilities Code § 454(b)(9).....	1
REGULATIONS	
14 Cal. Code Regs., tit 14, §15002(a)(3)	6
14 Cal. Code Regs., tit 14, §15021(a)(2)	6
14 Cal. Code Regs., tit 14, §15091(a)(1)	6
14 Cal. Code Regs. tit 14, §15064(f)(1).....	7

14 Cal. Code Regs., tit 14, § 15357	7
14 Cal. Code Regs., tit 14, §15382	7
14 Cal. Code Regs., tit 14, § 15378	6
14 Cal. Code Regs., tit 14, § 15378(c).....	6
CPUC DECISIONS	
D.07-12-053	1
D.12-01-033	1
D.13-10-040	2
OTHER AUTHORITIES	
(“FERC”). (Dec. 14, 2012). Order Approving Stipulation and Consent Agreement. Docket No. IN13-4-000	8
Executive Order S-3-05	3

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Pursuant to the Order Instituting Rulemaking (“OIR”), Sierra Club respectfully submits these timely comments on the OIR.

INTRODUCTION

The Long-Term Procurement Plan Proceeding (“LTPP”) is the Commission’s opportunity to squarely address the energy sector’s contribution to the pressing issues of global warming and its related health and safety issues, such as the sector’s role in ozone attainment failures in California’s dirtiest air basins.¹ The proposed decision in Track 3 of the 2012 LTPP affirms the Commission’s commitment “to goals related to GHG reduction and to the Loading Order prioritization of preferred resources (energy efficiency, demand response and renewable resources) over fossil-fuel resources.”² In a positive trend since 2006, the LTPPs have required that bundled plans reflect the priorities of the loading order and have established an on-going obligation for the Investor Owned Utilities (“IOUs”) to comply with the loading order.³ Tracking IOU compliance with these obligations, as well as tracking greenhouse gas (“GHG”) emissions and reductions from each utility has been a challenge. This proceeding should create

¹ See, e.g. Final 2012 Air Quality Management Plan, South Coast Air Quality Management District (Dec. 2012), p. 1-20 (According to the South Coast Air Quality Management District, “a transition to zero- and near-zero emission technologies is necessary to meet 2023 and 2032 air quality standards and 2050 climate goals”)

² R.12-03-014, Decision Modifying Long-Term Procurement Planning Rules (Jan. 28, 2014), p. 11.

³ *Id.*, p. 11-12 (citing Pub Utilities Code § 454 (b)(9); D.07-12-053, pp. 3-4; D.12-01-033, p. 20.)

the mechanisms that require and provide information on GHG impacts and compliance with California energy policy. Compliance with the California Environmental Quality Act of 1970, Public Resources Code § 21000 et seq. (“CEQA”) also will provide the Commission with the information necessary to make a more informed decision about procurement.

I. The LTPP Should Contribute to Achieving California’s Climate and Environment Goals.

The Commission should reframe the LTPP’s purpose by prioritizing excellence in addressing climate protection and other state environmental policy goals. The Commission’s recent energy storage decision, D.13-10-040, provides precedent for this approach. There, the Commission established guiding principles and policy for “setting procurement targets, designing procurement, and evaluating progress.”⁴ The Commission’s energy storage procurement policy is guided by three purposes:

- 1) The optimization of the grid, including peak reduction, contribution to reliability needs, or deferment of transmission and distribution upgrade investments;
- 2) The integration of renewable energy; and
- 3) The reduction of greenhouse gas emissions to 80 percent below 1990 levels by 2050, per California’s goals.⁵

This proceeding should adopt the same guiding principles and policy.

This approach orients the proceeding toward accomplishing the overall mission of the myriad of California energy policies advancing a low carbon future. Reaching the 2050 goal will require “California to accelerate the pace of emissions reductions that we achieve over the coming decades” and a “continued commitment to changing how we generate, transmit, and

⁴ D.13-10-040, Appendix A, p. 1.

⁵ *Id.* (citation omitted).

consume electricity.”⁶ With regard to the energy sector, the Air Resources Board’s Scoping Plan Update states that “California will need to continue to transform the energy sector with wholesale changes to its current electricity and natural gas systems” and “develop[] a near zero emission strategy for the energy sector.”⁷ This proceeding does the very planning that is necessary to steer California in the right direction.

Given the pressing nature of climate change, the proceeding needs to do more than just consider California energy policies in the context of the proceeding. The OIR explains that “[a]ll resource and procurement planning in this proceeding will be done in the context of the Energy Action Plan II (EAP II), the Commission’s Loading Order policies which prioritize certain preferred resources, and other state energy policies, such as AB 32 greenhouse gas, once-through-cooling policies and AB 327.”⁸ This proceeding should set out the defined policy goals that it seeks to achieve and set the path toward those goals. Since this is the long-term planning proceeding, decision making should be oriented to achieving, among other things, California’s 2050 GHG goals as well as meeting air quality attainment deadlines.⁹

II. The Phase 1 and Phase 2 Approach Is Appropriate, but the Bundled Plans Should be Addressed as Part of or in Conjunction with Phase 2.

Sierra Club supports dividing the proceeding into two phases where Phase 1 addresses need and Phase 2 addresses how to fill that need, if any.¹⁰ The OIR’s summary aptly describes the approach:

⁶ Air Resources Board, AB 32 Scoping Plan Update Discussion Draft (Oct. 2013), p. ES-3. Available at: http://www.arb.ca.gov/cc/scopingplan/2013_update/discussion_draft.pdf.

⁷ *Id.*, p.ES-4.

⁸ OIR, pp. 2-3 (citations omitted).

⁹ Executive Order S-3-05 (establishes a long-term target of reducing GHG emissions to 80% below 1990 levels by 2050); Final 2012 Air Quality Management Plan, South Coast Air Quality Management District (Dec. 2012) p. 1-20.

¹⁰ OIR, p. 10.

In this proceeding, we shall consider unresolved issues from Rulemaking (R.) 12-03-014, including issues related to the overall long-term need for new system and local reliability resources. These resource plans will allow the Commission to comprehensively consider the impacts of state energy policies on the need for new resources. Based on these system resource plans, we shall consider updates to the utilities' bundled procurement plans.¹¹

However, the initial schedule for the bundled plans does not comport with this approach; the bundled plans are scheduled to be submitted in April 2014. The resources plans will not have been developed by this time.

The bundled plans should be developed after Phase 1, when the system and local reliability resource needs are identified. The bundled plans could be developed in Phase 2 or in conjunction with it. This development would then parallel the identification of the resources necessary to fill system and local reliability plans. Compliance with the loading order in the system and local reliability areas should be intimately connected to the utilities procurement plans. The Commission has adopted appropriate and positive policy related to the loading order,¹² but the implementation of the system and bundled plans has not created the corresponding roadmap to ensuring compliance with the loading order. Shifting the bundled plans to parallel Phase 2 would further this objective.

Additionally, the least informative aspect of the long-term planning process has been the explanation of how the system and bundled plans will provide compliance with the State's greenhouse gas emission reduction goals. The plans should identify the sources of greenhouse gases and identify the possible methods for achieving emission reductions, including analyzing

¹¹ OIR, p. 2.

¹² R.12-03-14, Decision Modifying Long-Term Procurement Planning Rules (Jan. 28, 2014) pp. 11-12.

higher RPS targets.¹³ The system and bundled plans should explain and graphically demonstrate how emissions reductions will occur. This analysis should incorporate implementation plans for compliance with the loading order. The Commission should require a standardized format for the greenhouse gas emission reduction 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 Resources Board regarding the energy sector’s progress towards its AB 32 mandate and 2050 greenhouse gas reduction goal.

III. CEQA Review Will Provide Insight into the Procurement Authorization that the Commission Ultimately Adopts.

The assessment and authorization of procurement choices in Phase 2, as well consideration of new CHP targets and other procurement policies, require environmental review under CEQA. Sierra Club thus urges the Commission to include CEQA compliance within the proceeding’s scope of issues and to build CEQA compliance into the timetable for resolving the proceeding at the outset of planning.

The two phased approach of the proceeding provides ample opportunity and time to incorporate CEQA into the analysis. CEQA requires public agencies to consider and document the environmental implications of their actions to “[e]nsure that the long-term protection of the environment . . . shall be the guiding criterion in public decisions.”¹⁴ CEQA applies to all “discretionary projects proposed to be carried out or approved by public agencies.”¹⁵ Several components of the 2014 LTPP proceeding – including but not limited to consideration of

¹³ See, e.g., Comments of the Union of Concerned Scientists and Sierra Club on Key Technical Question for Parties in Response to December 18th, 2013 Workshop on Planning Assumptions and Scenarios for Use in the CPUC 2014 Long Term Procurement Plan Proceeding and the CAISO 2014-2015 Transmission Planning Process (Jan. 8, 2014), p. 1-7 (advocating for analysis of 40% RPS in 2024 and at least 50% in 2030 and explaining that to achieve the 2050 goals the 2030 RPS may need to be significantly higher than 50%).

¹⁴ Pub. Resources Code § 21001(d); see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (“CEQA’s fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials”).

¹⁵ Pub. Resources Code § 21080(a).

procurement authorizations of specific resources to fill overall system, local and flexibility needs, and consideration of CHP targets and new procurement policies – constitute discretionary projects within the meaning of CEQA, and will likely require environmental analysis before final decision making by the Commission.

Procurement planning and authorization actions during the 2014 LTPP constitute a “project” because these actions will allow IOUs to engage in procurements that will directly impact the environment. A “project” for CEQA purposes is defined as any activity that may cause a direct or reasonably foreseeable indirect physical change to the environment.¹⁶ A decision by the Commission to satisfy system needs by authorizing natural-gas fired generation procurement, for example, will result in new gas plant operations that physically change the environment via air emissions, water resource use, water discharges, solid waste generation and/or land resource use.¹⁷ Additionally, policy changes by the Commission, such as the revisions to CHP targets, also may have reasonably foreseeable impacts on air emissions and emission mitigation, among others. CEQA’s requirement to assess alternatives provides an important and required mechanism for analyzing policy choices related to the adjustment of the CHP targets.¹⁸

There is no question that the Commission’s authority to make procurement and policy decisions during this proceeding is discretionary under CEQA. CEQA Guidelines define discretionary projects as actions requiring “the exercise of judgment or deliberation when the

¹⁶ Pub. Resources Code § 21065; 14 Cal. Code Regs., tit 14, § 15378; 14 Cal. Code Regs., tit 14, § 15378(c) (noting that “project” is defined broadly to ensure review of both agency approval of activities and activities resulting from the approval).

¹⁷ Should the Commission find during Phase 1 that overall system, local and flexibility needs do not exceed zero for the 2014 cycle, no new procurement authorizations will be needed; this would significantly affect the CEQA analysis.

¹⁸ Pub. Resources Code §§ 21002, 21081(a); 14 Cal. Code Regs., tit 14, §§15002(a)(3), 15021(a)(2), 15091(a)(1) (requiring agencies to adopt feasible mitigation measures or feasible environmental superior alternatives in order to substantially lessen or avoid otherwise significant adverse environmental impacts of proposed projects).

public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.”¹⁹ In this proceeding, the Commission is tasked with wholly discretionary decision making following a review of evidence and stakeholder advocacy.

Preparation of an EIR may be required of the Commission before final decisions are made. If an agency is presented with a “fair argument,” supported by substantial evidence, that a project may have a significant effect on the environment, it must prepare an EIR even where it is presented with other substantial evidence indicating that the project will have no significant effect.²⁰ This “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA.²¹ Here, a fair argument can be anticipated that the Commission’s actions during this proceeding will result in a significant effect on the environment. Accordingly, and in light of the time and resources needed to perform adequate CEQA review, Sierra Club strongly encourages the Commission to include CEQA compliance considerations in its Scoping Memo and schedule.²²

¹⁹ 14 Cal. Code Regs., tit 14, § 15357; see also *id.* § 15002(i); see also *Natural Res. Def. Council v. Arcata Nat'l Corp.* (1976) 59 Cal.App.3d 959, 971 (discretion exists where the approving agency can impose “reasonable conditions” based on “professional judgment”); see also *Simi Valley Recreation & Park District v. Local Agency Formation Comm.* (1975) 51 Cal.App.3d 648, 664 (discretionary planning by an agency is a “project” whenever it is “necessary to the carrying out of some private project involving a physical change in the environment”).

²⁰ See *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1202-03; see also *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; 14 Cal. Code Regs. tit 14, §§ 15064(f)(1), 15382. (“Significant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance”).

²¹ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

²² If necessary, the Commission intends to authorize specific resources near the end of 2015 as part of “Phase 2” of this proceeding. (OIR, p. 10.) Recognizing its CEQA obligations now as part of scope of issues and timetable considerations, in advance of Phase 2 activities, is the proper approach. This gives the Commission the time needed to plan CEQA review efforts. Punting discussion and acknowledgement of CEQA obligations to a later date in this proceeding may cause delay in the process and jeopardize the quality of environmental review as a result.

IV. The Safety Considerations Should Include Consideration of Global Warming Impacts on Health and Safety.

The Commission lists safety as an issue under consideration in the proceeding, and “may consider revising procurement rules to better reflect this commitment to public safety and health.”²³ Any comprehensive consideration of public safety and health must include a consideration of the public health ramifications of climate change in California.

The OIR’s reference to safety concerns resulting from effects of potential blackouts appears to elevate an issue that does not need resolving.²⁴ First, the local reliability assessment uses a one in ten year peak load standard for determining reliability, and there has been no identified system need for the last two LTPPs because there is a more than adequate reserve margin.²⁵ Testimony in the last LTPP discussed the conservative nature of this assessment and the extreme improbability of blackout occurring.²⁶ The major blackouts that occurred in California as part of the “energy crisis” from 2000 to 2001 can be directly linked to market manipulation.²⁷ Major blackouts in San Diego in 2010 and 2012 resulted from operational issues.²⁸ In comparison to the ongoing, documented impacts of global warming on California’s public safety and health, the Commission’s safety concerns about blackouts are misplaced and distract from the more acute issue of GHG emissions.

²³ OIR, p. 12.

²⁴ See OIR, p. 5.

²⁵ See, e.g. Prepared Direct Testimony of Bill Powers on behalf of the California Environmental Justice Alliance, R.12-03-014, Track 1, p. 32 (June 25, 2012).

²⁶ See, e.g. Prepared Direct Testimony of Julia May on behalf of the California Environmental Justice Alliance, R.12-03-014, Track 1, p. 41 (June 25, 2012).

²⁷ See, e.g. Goyette, Martin (Office of the Attorney General). (Sept. 26, 2011). The California Energy Crisis 2000-2001: Update on Post-Crisis Developments. Briefing for the Little Hoover Commission. <http://www.lhc.ca.gov/studies/activestudies/energygov/GoyetteSep11.pdf>

²⁸ See, e.g. Federal Energy Regulatory Commission (“FERC”). (Dec. 14, 2012). Order Approving Stipulation and Consent Agreement. Docket No. IN13-4-000; FERC and the North American Electric Reliability Corporation. (April 2012). *Arizona-Southern California Outages on September 8, 2011: Causes and Recommendations*, p. 5

The foremost task should be to ensure GHG emission reductions. Our changing climate will create a variety of conditions that will harm public health and safety, including: more extreme weather events, worse air quality, more allergens, more wildfires, increased spread of communicable and vector-borne diseases, and threatened water and food supplies.²⁹ Each of these conditions poses a significant, measurable threat to public health in California. For example, researchers found that during a 10-day heat wave in 2006, there were 16,166 more emergency room visits than expected, 1,182 more hospitalizations and 655 associated deaths.³⁰ Poor air quality, which emissions from gas fired generation exacerbate, is currently associated with “8,800 deaths, 9,500 hospitalizations, 200,000 cases of asthma and lower respiratory symptoms, and nearly five million school absences in California each year.”³¹ Ground-level pollutants are expected to develop more rapidly due to climate change,³² which will lead to an increase in these already unacceptably high figures. Furthermore, the public health dangers associated with climate change disproportionately affect vulnerable populations. Sierra Club urges the Commission to consider the health effects of climate change in its analysis of new fossil fuel generation, with the goal of protecting the health and wellbeing of all Californians, especially those most burdened by and vulnerable to the effects of climate change.

V. All Long-Term Procurement Analysis and Authorization Related to SDG&E Should Occur in the Proceeding.

The Commission should end its practice of considering some long-term planning issues related to SDG&E in a proceeding separate from the LTPP. In D.12-04-046, the Commission

²⁹ California Natural Resources Agency. *2009 California Climate Change Adaptation Strategy: A Report to the Governor of the State of California in Response to Executive Order S-13-2008*, p. 30.

³⁰ *Id.*, p. 32.

³¹ *Id.*, p. 33.

³² *Id.*

bifurcated issues related to SDG&E local reliability to a different proceeding, A. 11-05-023.³³

This bifurcation continued in Application 13-06-015 where potential issues related to Track 4 of the 2012 LTPP were being litigated in a proceeding solely related to SDG&E, even though SDG&E's territory is a subset of the SONGS local reliability area.³⁴ Bifurcation hinders public participation, may result in inconsistent assumptions and decisions, and is inefficient.

Consequently, the Commission should ensure that all long-term planning issues are addressed in this proceeding.

VI. Coordination with the New Rulemaking on Joint Reliability Plan Needs to Clearly Delineate Decision-Making in this Proceeding.

The Joint Reliability Plan proceeding has not yet commenced but, when it is initiated, Sierra Club respectfully requests that the Commission specifically delineate what issues are being considered in each proceeding. Sierra Club is concerned that where, as here, two parallel proceedings are considering parallel or similar topics, finger-pointing by parties and failures to explicitly assign issues to the scope of each proceeding may result in issues not being addressed at all. To avoid this outcome, the jurisdiction of this proceeding should be clearly delineated as early as feasible.

CONCLUSION

Sierra Club respectfully requests that the scoping plan be adjusted according to the foregoing suggestions.

Dated: February 3, 2014

Respectfully submitted,

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³³ D.12-04-046, pp. 5-6.

³⁴ A. 13-06-015, Assigned Commissioner's Scoping Memo and Ruling (Aug. 26, 2013), pp. 1-2.

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