

**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 December 19, 2013)

**COMMENTS OF THE CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE  
ON THE PRELIMINARY SCOPING MEMO ISSUED DECEMBER 30, 2013**

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## **CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE'S COMMENTS ON THE PRELIMINARY SCOPING MEMO**

The California Environmental Justice Alliance (CEJA) submits these comments on the Preliminary Scoping Memo in the Order Instituting Rulemaking (“OIR”), filed December 19, 2013. These comments are timely and served pursuant to the Preliminary Scoping Memo and the Commission’s Rules of Practice and Procedure. These comments describe CEJA and its interest in this proceeding. CEJA then respectfully requests consideration of four issues in the 2014 LTPP that were not specified in the OIR: the need for equity in energy policy through consideration of environmental justice in the procurement process, increased transparency in the procurement process, ensuring independence of the independent evaluator, and greater consideration of greenhouse gas (GHG) policy.

### **I. Description of the California Environmental Justice Alliance**

CEJA is an alliance of six grassroots environmental justice organizations situated throughout California. 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. CEJA has brought together these organizations to impact and change policy decisions throughout the state. Together, the six member organizations of CEJA work to achieve environmental justice for low-income communities and communities of color throughout California. In particular, CEJA is “pushing for policies at the federal, state, regional and local levels that protect public health and

the environment.”<sup>1</sup> CEJA is also “working to ensure that California enacts statewide climate change policies that protect low-income communities and communities of color.”<sup>2</sup>

One of CEJA’s primary initiatives is its Climate Justice and Local Renewable Energy initiative, which aims to transform California’s energy system into “one that is just, democratic, equitable, and composed of genuinely clean energy.”<sup>3</sup> To accomplish this transformation, CEJA works to bring locally produced clean energy to environmental justice communities, thereby putting energy production in their own hands, providing green jobs, and reducing local health and environmental impacts by displacing older and dirtier pollution sources.<sup>4</sup> As part of this initiative, CEJA helped pass SB 43 in 2013, a bill that will help build more renewable energy in environmental justice communities,<sup>5</sup> and CEJA has been an active participant in front of the Commission in the 2012 LTPP (R.12-03-014) proceeding as well as SDG&E’s application to enter into purchase power tolling agreements (A.12-05-023).

CEJA is participating in the 2014 Long Term Procurement Proceeding to urge the Commission to meet and exceed its renewable and environmental goals and to assure that its policies do not adversely impact environmental justice communities.

## **II. CEJA Requests that the Commission Consider Environmental Justice When Making any Procurement Decisions, Transparency, Independent Evaluators, and GHGs in the 2014 LTPP.**

The OIR states that other issues to be considered in the 2014 LTPP must “(1) Materially impact procurement policies, practices and/or procedures; (2) Be narrowly defined; and (3) Demonstrate consistency with one or more of the LTPP proceeding goals.”<sup>6</sup> The OIR further

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<sup>1</sup> California Environmental Justice Alliance, About Us, *available at* <http://caleja.org/about-us/>.

<sup>2</sup> California Environmental Justice Alliance, Climate Justice, *available at* <http://caleja.org/climate-justice/>.

<sup>3</sup> California Environmental Justice Alliance, Green Zones Initiative, <http://caleja.org/climatejustice/>.

<sup>4</sup> *Id.*

<sup>5</sup> Electricity: Green Tariff Shared Renewables Program (2013 California Senate Bill No. 43), ch. 413, Cal. 2013-14 Regular Session (adopted Sept. 28, 2013) (West); *also see* Cal. Pub. Util. Code § 2833(d)(1)(A).

<sup>6</sup> R.13-12-010, Order Instituting Rulemaking [hereinafter “OIR”] (Dec. 30, 2013), at p. 14.

provides that in the 2014 LTPP the Commission intends to consider “broad rule and policy issues related to procurement plans.”<sup>7</sup> CEJA has identified four issues that meet these requirements: (A) consideration of environmental justice in connection with procurement decisions; (B) improved transparency in the procurement process; (C) changes to the hiring of and reporting by independent evaluators; and (D) consideration of GHGs in connection with procurement decisions.<sup>8</sup> Issues (B) and (C) were included to some extent, but appear to not be resolved, in R.12-03-014.<sup>9</sup> In addition, none of these issues are squarely before the Commission in any other proceedings. Therefore, CEJA respectfully requests that these issues be considered in the 2014 LTPP.

**A. The Commission Should Require Consideration of Environmental Justice in Procurement and Bid Selection Decisions.**

Environmental justice (“EJ”) refers to the disproportionate burden of environmental pollution placed on low-income and minority communities.<sup>10</sup> Such pollution results from both mobile<sup>11</sup> and stationary sources, which are most often concentrated in low-income/minority communities.<sup>12</sup> Increased exposure to fossil fuel emissions in environmental justice communities causes higher rates of related cancers and diseases,<sup>13</sup> particularly among sensitive

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<sup>7</sup> *Id.* at p. 11.

<sup>8</sup> In addition, CEJA believes that the Commission should consider EJ when evaluating green job opportunities consistent with Sections of 8281 and 8282 the Public Utilities Code.

<sup>9</sup> These issues were not resolved in the proposed Track III decision in R.12-03-014 that was served on January 28, 2014.

<sup>10</sup> Environmental Justice, CEC, [http://www.energy.ca.gov/public\\_adviser/environmental\\_justice\\_faq.html](http://www.energy.ca.gov/public_adviser/environmental_justice_faq.html). *See also* Cal. Govt. Code § 65040.12.

<sup>11</sup> Environmental Justice Screening Method (EJSM) and Community Participation, Pastor et al. at p. 5, available at <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CARE%20Program/Task%20Force%20Meetings/060512%20TF/EJSM%20and%20Community%20Participation.ashx?la=en> at p. 11 (See Hazardous Land Use slide).

<sup>12</sup> See D.07-12-052 at p. 157 (noting that the utilities should give greater weight to the disproportionate resource sites in low income and minority communities).

<sup>13</sup> Estimate of Premature Deaths Associated with Fine Particle Pollution (PM2.5) in California Using a U.S. Environmental Protection Agency Methodology (August 2010), available at [http://www.arb.ca.gov/research/health/pm-mort/pm-report\\_2010.pdf](http://www.arb.ca.gov/research/health/pm-mort/pm-report_2010.pdf) at p. 1. (CARB estimates around 10,000 annual premature deaths in CA due to PM2.5 exposure).

populations (i.e. pregnant women, children, the elderly, and people with existing respiratory diseases).<sup>14</sup>

State law and the Commission’s own policies require consideration of environmental justice in the procurement process. For example, the Public Utilities Code requires that utilities “give preference to renewable energy projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment, or that suffer from high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.”<sup>15</sup> Commission precedent echoes that directive, stating that IOUs “need to provide greater weight” to criteria regarding “disproportionate resource siting in low-income and minority communities and environmental impacts.”<sup>16</sup> Indeed, the Commission’s Procurement Policy Manual states explicitly that IOUs “shall consider” environmental justice issues in evaluating bids from an RFO.<sup>17</sup>

Recent legislation also demonstrates the state’s policy of considering EJ. SB 535 requires that at least 25% of GHG Reduction Fund money should provide benefits to “disadvantaged communities,” with at least 10% of that money funding projects located within those communities.<sup>18</sup> SB 43 similarly prioritizes EJ communities by requiring that 100 MW of renewable energy facilities be “located in areas previously identified by the California [EPA] as

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<sup>14</sup> Pastor et al., Playing It Safe: Assessing Cumulative Impact and Social Vulnerability through an Environmental Justice Screening Method in South Coast Air Basin, California, 8 Int. J. Environ. Res. Public Health, 1441, 1447 n.5 (2011) (available at [www.mdpi.com/1660-4601/8/5/1441](http://www.mdpi.com/1660-4601/8/5/1441)).

<sup>15</sup> Cal. Pub. Util. Code § 399.13(a)(7). The section refers to the solicitation and procurement of California-based projects.

<sup>16</sup> D.07-12-052, Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas & Electric Company’s Long-Term Procurement Plans (Dec. 21, 2007), p. 157.

<sup>17</sup> California Public Utilities Commission AB 57, AB 380, and SB 1078 Procurement Policy Manual (June 2010), p. 4-8; available under 2010 LTPP at [http://www.cpuc.ca.gov/PUC/energy/Procurement/Procurement/procurement\\_history.htm](http://www.cpuc.ca.gov/PUC/energy/Procurement/Procurement/procurement_history.htm). This manual was cited as authority in the recent Track III proposed decision in R.12-03-014 at pp. 4-5.

<sup>18</sup> SB 535, California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund, Chapter 830, 2012 (De León); see also Cal. Health & Safety Code § 39713(a)-(b).

the most impacted and disadvantaged communities.”<sup>19</sup> In addition, pursuant to AB 32, in furtherance of achieving statewide GHG emissions limits, CARB must consider potential “localized [emissions] impacts in communities that are already adversely impacted by air pollution.”<sup>20</sup> Even California Attorney General Kamala Harris has recognized the importance of including EJ in state policy since, “by following well-established CEQA principles, local governments can further environmental justice.”<sup>21</sup>

Despite the legislative mandates and Commission policies regarding environmental justice detailed above, the Commission does not presently have specific guidelines, rules, or standards explaining how utilities should consider EJ when selecting bids. In the absence of specific guidance from the Commission, EJ goes largely ignored or unreported in the procurement process. For example, Southern California Edison’s recent procurement plan for both gas fired generation and renewable resources lists many factors that utilities are required to consider in the bid selection process, including minimum amounts of preferred resources, energy storage, and conventional gas-fired generation; environmental justice is not mentioned as one of the factors.<sup>22</sup> Although some utilities, such as Pacific Gas & Electric, have a Corporate Environmental Justice Policy stating they will conduct “operations in a manner that is consistent with and promotes environmental justice principles[,]”<sup>23</sup> it is difficult to determine whether the utilities actually follow their own general EJ policy without any guidance on how it should be implemented. If the Commission provides guidelines on how utilities should consider EJ in the

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<sup>19</sup> SB 43, Electricity: Green Tariff Shared Renewables Program, Chapter 413, 2013 (Wolk).

<sup>20</sup> AB 32, The Global Warming Solutions Act of 2006, Chapter 488, 2006 (Nunez); Cal. Health & Safety Code § 38570(b)(1).

<sup>21</sup> Environmental Justice at the Local and Regional Level: Legal Background, Kamala D. Harris, Office of the California Attorney General, p. 2, *available at* [http://oag.ca.gov/sites/all/files/pdfs/environment/ej\\_fact\\_sheet.pdf](http://oag.ca.gov/sites/all/files/pdfs/environment/ej_fact_sheet.pdf).

<sup>22</sup> R.12-03-014, Track 1 Procurement Plan of Southern California Edison Company Submitted to Energy Division Pursuant to D.13-02-015 (Aug. 30, 2013) p. 2, *available at* [https://www.sce.com/wps/wcm/connect/0a312536-5ba4-4153-a3bd-0859e15badeb/TrackI\\_SCELCRProcurementPlanPursuanttoD1302015.pdf?MOD=AJPERES](https://www.sce.com/wps/wcm/connect/0a312536-5ba4-4153-a3bd-0859e15badeb/TrackI_SCELCRProcurementPlanPursuanttoD1302015.pdf?MOD=AJPERES).

<sup>23</sup> PG&E Corporate Energy Justice Policy, *available at* [http://www.pge.com/includes/docs/pdfs/about/environment/pge\\_ej\\_policy.pdf](http://www.pge.com/includes/docs/pdfs/about/environment/pge_ej_policy.pdf).

bid selection process, the IOUs would have to evaluate it. Requiring the consideration of environmental justice in the procurement process will therefore have a material impact on procurement policies, practices, and procedures by putting the Commission's practices and procedures in line with the aforementioned State policies that require the consideration of EJ.

Requiring EJ to be considered in the bid selection process is a narrow issue that fits squarely within the Commission's jurisdiction. A reliable, publicly available tool developed by the State is available to identify EJ communities: the California Communities Environmental Health Screening Tool (aka CalEnviroScreen) was developed by the California Office of Environmental Health Hazard Assessment to identify EJ communities for regulatory agency decisions.<sup>24</sup> CalEnviroScreen assesses locations with disproportionate environmental burdens on a geographic scale.<sup>25</sup> The actual weighting of EJ as a factor could be accomplished through instruments, such as adders, that the Commission has used before when it has required a factor to be considered in the bid selection process.<sup>26</sup> For example, the Commission could order the use of a positive adder to increase the overall cost of fossil fuel generation near EJ communities and a negative adder to reduce the cost for preferred resources located in EJ communities.

Since California already has a definition of environmental justice<sup>27</sup> and a tool exists to determine which EJ communities should receive consideration in procurement decisions, the Commission would not have to create its own model to determine how to identify EJ

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<sup>24</sup> Office of Environmental Health Hazard Assessment, California Communities Environmental Health Screening Tool, Version 1.1 (CalEnviroScreen 1.1) (2013), *available at* <http://oehha.ca.gov/ej/ces11.html>. Another possible tool is the Environmental Justice Screening Method (EJSM); *see* James L. Sadd, et al, Playing It Safe: Assessing Cumulative Impact and Social Vulnerability through an Environmental Justice Screening Method in the South Coast Air Basin, California, *Int. J. Environ. Res. Public Health* 2011, 8, 1441-1459; *available at* <http://www.mdpi.com/1660-4601/8/5/1441>.

<sup>25</sup> Office of Environmental Health Hazard Assessment, California Communities Environmental Health Screening Tool, Version 1.1 (CalEnviroScreen 1.1) (2013), *available at* <http://oehha.ca.gov/ej/ces11.html>.

<sup>26</sup> D.04-12-048, at p. 3 (requiring the use of a greenhouse gas adder as a bid evaluation component.); D.09-12-042, at p. 73 (FOF 19) (approved a 10% locational adder for CHP facilities located in a local resource adequacy area).

<sup>27</sup> Cal. Govt. Code § 65040.12 (“‘Environmental justice’ means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”)

communities. The Commission need only determine how to weigh EJ as a factor in the bid selection process and what guidelines are necessary to ensure that IOUs complete the required evaluation. As such, the issue for consideration is narrowly defined and within the scope of this Proceeding.

CEJA’s proposal is also consistent with LTPP proceeding goals. The Commission’s goals in the LTPP proceeding include the “integration and refinement of a comprehensive set of procurement policies, practices and procedures [that underlie] long-term procurement plans.”<sup>28</sup> These policies, practices, and procedures must balance reliability, “reasonableness of rates, and a commitment to a clean environment[;]”<sup>29</sup> as well as a commitment to “public safety and health.”<sup>30</sup> As detailed above,<sup>31</sup> California statutory authority, in agreement with State policy and the legislature, requires IOUs to “give preference to renewable energy projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment, or that suffer from high emission levels of [a variety of air pollutants]”;<sup>32</sup> i.e. the utilities must consider the impacts on environmental justice communities.<sup>33</sup> California’s overarching commitment to EJ is clear, but has not been reflected in Commission guidance or IOU actions. In order to bridge this gap with the State’s commitment as well as ensure consistency among the IOUs, Commission directives are needed to provide guidance to the IOUs.

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<sup>28</sup> OIR at p. 2.

<sup>29</sup> D.13-02-015, Decision Authorizing Long-Term Procurement For Local Capacity Requirements, at p. 35.

<sup>30</sup> OIR at p. 12.

<sup>31</sup> See *supra* at pp. 4-5.

<sup>32</sup> Cal. Pub. Util. Code § 399.13(a)(7).

<sup>33</sup> See also Cal. Pub. Util. Code § 701.1(a) (“The Legislature finds and declares that, in addition to other ratepayer protection objectives, a principal goal of electric and natural gas utilities’ resource planning and investment shall be to *minimize the cost to society* of the reliable energy services that are provided by natural gas and electricity, and to *improve the environment* and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, biomass, and geothermal energy.”)(emphasis added).



Since the consideration of environmental justice would materially impact procurement policies, practices, and procedures; is narrowly defined; and is consistent with LTPP proceeding goals, the Commission should require the consideration of environmental justice in procurement decisions.

**B. The Commission Should Consider Revising Independent Evaluator Hiring and Reporting Rules in Order To Eliminate Real or Perceived Conflicts of Interest.**

The 2014 LTPP should include consideration of Independent Evaluator (IE) hiring and reporting requirements. Specifically, the Commission should consider: (1) whether the Commission should hire the IEs instead of utilities; and (2) whether the IEs should report to the Commission instead of to the utilities. The current practice of utilities hiring IEs creates “real or perceived conflicts of interest.” In D-07-12-052 the Commission acknowledged that ensuring the independence of the IE “is of the utmost importance and that the current hiring and selection process may not adequately ensure, or at least appear to ensure, such independence.”<sup>34</sup> The Commission stated its intent to explore ways to transfer IE contracting authority to the Commission.<sup>35</sup> The issues of IE hiring and reporting materially impact procurement policies, are narrowly defined, are consistent with the proceeding’s goals, and should be considered in this proceeding.<sup>36</sup>

**C. The Commission Should Consider Increasing Transparency in the RFO Process.**

Transparency in the procurement process is a Commission goal.<sup>37</sup> To guarantee “meaningful public participation and open decision-making,”<sup>38</sup> the Commission should ensure

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<sup>34</sup> D.07-12-052, (Dec. 21, 2007) at p. 136.

<sup>35</sup> *Id.*

<sup>36</sup> OIR at p. 14. While Track 3 of the 2012 LTPP did include certain issues regarding IEs within its scope, the Proposed Decision issued Jan. 28, 2014 does not address the issues raised here nor does it preclude consideration of those issues here.

<sup>37</sup> *See, e.g.*, D.06-06-066, p. 1 (“This decision implements Senate Bill (SB) No. 1488...(which) expresses a preference for open decision making, a policy directive we embrace.”); D. 07-12-052, p. 155 (“The evaluation

that communities affected by RFO determinations have access to enough information to allow assessment of the potential risks and benefits involved. Specifically, CEJA believes that additional disclosure of the following would increase meaningful public participation and open decision-making: (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>39</sup> These issues are narrowly defined, would improve the procurement process and further the goals of the LTPP, and should be considered in this Proceeding.

**D. The Commission should Consider GHGs in All Procurement Policy Decisions.**

CEJA recognizes that the Commission identified “GHG Procurement Policy” with respect to CARB’s cap-and-trade program an issue to be evaluated in the Proceeding.<sup>40</sup> However, given the “serious threat to the economic well-being, public health, natural resources, and the environment of California”<sup>41</sup> posed by global warming and State policy/legislation requiring significant GHG reductions,<sup>42</sup> the consideration of GHG should be much broader and included in all of the Commission’s decisions in this Proceeding. Importantly, this LTPP is the opportunity to evaluate the policy road-map to determine what steps are necessary to meet the State’s goals.<sup>43</sup>

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criteria used in competitive solicitation must be clear, transparent, and available to potential bidders.”); D.12-11-016, p. 45 (detailing how the Commission preferred PG&E’s revised procurement methodology due to the clarity and transparency it provided to potential bidders.)

<sup>38</sup> SB 1488 (Cal. Stats., 2004, ch. 690, Sec 1, effective Sept. 22, 2004).

<sup>39</sup> CEJA is not suggesting disclosure of RFO bid and offer information, but rather disclosure of information about the design of the RFO itself.

<sup>40</sup> OIR at pp. 12-13.

<sup>41</sup> Cal. Health & Safety Code § 38501(a).

<sup>42</sup> AB 32, The Global Warming Solutions Act of 2006, Chapter 488, 2006 (Nunez); Cal. Health & Safety Code § 38570(b)(1).

<sup>43</sup> See Comments of California Environmental Justice Alliance on the Proposed Standardized Planning Assumptions for the 2014 LTPP (Jan. 8, 2014), at p. 4 (discussing the importance of consideration of GHGs in this Proceeding).

## CONCLUSION

For the reasons stated above, CEJA respectfully requests that the Commission evaluate considering environmental justice in procurement and bid selection decisions, increased transparency in the procurement process, modifying the use and hiring of the independent evaluator, and greater consideration of GHGs in this Proceeding.

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