

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.12-03-014
(Filed March 22, 2012)

CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE'S AND SIERRA CLUB
CALIFORNIA'S COMMENTS ON THE TRACK III PROPOSED DECISION

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Dated: February 18, 2014

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Appendix A: Proposed Conclusions of Law and Ordering Paragraphs

**CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE’S AND SIERRA CLUB
CALIFORNIA’S COMMENTS ON THE TRACK III PROPOSED DECISION**

Pursuant to Article 14 of the Commission’s Rules of Practice and Procedure, the California Environmental Justice Alliance (CEJA) and Sierra Club California (Sierra Club) respectfully submit these comments on the January 28, 2014 Administrative Law Judge David M. Gamson’s Proposed Decision Modifying Long-Term Procurement Planning Rules (Proposed Decision or PD).¹ These comments are timely submitted pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure. Rule 14.3(c) provides that comments “shall focus on factual, legal or technical errors” in the Proposed Decision. CEJA and Sierra Club support the PD’s continued emphasis on the importance of transparency and environmental goals and requirements. To better effectuate these important goals and requirements, CEJA and Sierra Club recommend clarifications and modifications to improve the administration of the planning rules and requirements.

I. CEJA and Sierra Club Recommend That the PD Include Reporting Requirements to Ensure that the Loading Order Is Considered in the Procurement Process.

Although the PD does not establish “new minimum or maximum procurement levels for bundled procurement plans,”² it recognizes that Commission policies, requirements and goals require that utilities prioritize preferred resources and consider environmental requirements such as GHG goals.³ Specifically, the PD reiterates that the Commission will “continue to expect every reasonable effort to meet or exceed environmental goals, consistent with reliability and cost.”⁴ The PD further states that the Commission “will review the upcoming bundled

¹ Two versions of a modified Proposed Decision were sent to the parties on January 31, 2014 and February 4, 2014. The pages referenced in these comments reflect the modified February 4, 2014 Proposed Decision.

² R.12-03-014, Proposed Decision Modifying Long-Term Procurement Planning Rules (Jan. 28, 2010) (hereinafter referred to as “PD”), p. 10.

³ *Id.* at p. 12.

⁴ *Id.*

procurement plans to ensure they continue to incorporate other relevant Commission environmental directives from other proceedings.”⁵

Although CEJA and Sierra Club support and appreciate the PD’s reiteration of the importance of the loading order and environmental goals, CEJA and Sierra Club are concerned that nothing in the PD or in current procurement requirements actually ensures that these requirements will be met. Because utilities do not have to procure fixed amounts of preferred resources,⁶ additional review or requirements are generally necessary to safeguard the Commission’s policy of the “ongoing loading order approach.”⁷ As the Commission has previously recognized, utilities have historically failed to comply with the loading order.⁸ In light of the utilities’ track record of non-compliance with the loading order, reporting requirements are necessary to meet California’s high standard of strict compliance. The loading order and environmental safeguards will only be nominal safeguards if the Commission does not include concrete reporting requirements to assist it and stakeholders with the review of procurement practices to ensure that environmental requirements are met.

CEJA and Sierra Club recommend that the Commission require utilities to report their compliance with the loading order for each transaction that does not procure either preferred or energy storage resources. This reporting would include a statement by the utilities that no cost effective, reliable, and feasible preferred or energy storage resources were available to meet the need for each transaction that does not involve either a preferred or energy storage resource.

CEJA and Sierra Club recommend the following sentence be added to Conclusion of Law Number 2 and a new ordering paragraph to effectuate this change:

⁵ *Id.* at p.13.

⁶ D.13-02-015 at p. 11 (citing D. 12-01-033at p. 21).

⁷ *Id.*

⁸ *See* D.07-12-052 at pp. 3-4; D.12-01-022 at p. 21.

Revised Conclusion of Law 2: The Public Utility Code Section 454.5(b)(9) requirement of “a showing that the procurement plan will fulfill its unmet resource needs from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the California Renewables Portfolio Standard Program” and that each utility “shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible” is ongoing. IOUs shall report their compliance with these requirements in their bundled procurement filings.

New Ordering Paragraph: IOUs shall report their compliance with Public Utility Code Section 454.5(b)(9) by certifying that no cost effective, reliable, and feasible preferred resources were available to meet the need for each transaction that does not involve a preferred or energy storage resource.⁹

II. CEJA and Sierra Club Recommend That the PD Clarify That IOUs Should Update Their Estimates of Expected Departing Load Annually.

The PD appropriately requires IOUs to plan and forecast for reasonable amounts of departing load in their bundled plans.¹⁰ As more Community Choice Aggregators (CCAs) and other types of direct access energy providers come on-line, the IOUs’ bundled load base is shrinking. Consequently, failing to reasonably account for departing load will lead to over-procurement, which could saddle ratepayers and the environment with unneeded infrastructure and costs. The amount of departing load for a given IOU is likely to change over time as other entities implement CCAs.¹¹ To ensure that utilities are relying on the best information available, CEJA and Sierra Club respectfully suggest that utilities update their forecasts of departing load

⁹ This paragraph should follow the Proposed Decision’s Ordering Paragraph No. 1.

¹⁰ See PD at p. 16.

¹¹ See, e.g., California Public Utilities Commission, Community Choice Aggregation http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm (last visited Feb. 10, 2014) (including letters from San Francisco and Sonoma intentions related to becoming a CCA).

annually. To accomplish this change, CEJA and Sierra Club recommend the following addition to Ordering Paragraph 1:

Revised Ordering Paragraph 1: Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the IOUs) shall estimate reasonable levels of expected Direct Access and Community Choice Aggregation departing load over the 10-year term of the IOUs bundled plans, using information provided by the California Energy Commission and/or by a Community Choice Aggregator in its Binding Notice of Intent. The IOUs shall update this estimate annually. The IOUs shall then exclude this departing load from their future bundled procurement plans, and only procure for the assumed amounts of retained bundled load. Having been excluded from the bundled portfolio planning scenarios, the forecasted Direct Access and Community Choice Aggregation departing load shall not be subject to non-bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans.

III. The PD Fails to Consider Ways to Increase Transparency in the Procurement Process.

CEJA and the Sierra Club agree with the PD's proposed Conclusion of Law that "[i]t is in the public interest to promote greater reporting of the information that the Commission regularly collects from the utilities regarding procurement activities ... to the extent that confidentiality is not compromised."¹² This finding reflects comments made by Sierra Club, CEJA and other stakeholders emphasizing the need for increased information sharing with the public about forward procurement activities while using existing mechanisms to protect confidential

¹² PD at p. 72.

information.¹³

The PD nevertheless fails to address critical open information failures in Procurement Review Group (PRG) activities. PRG meetings are governed by the Bagley-Keene Open Meeting Act, which requires that rules are developed by the Commission to ensure the Act's implementation with respect to PRG activities.¹⁴ The PD instructs the PRG to meet and work on creating quarterly compliance reporting guidelines to improve procurement activity transparency, but it takes no steps towards ensuring that the PRG meetings will themselves be transparent consistent with requirements under the Open Meeting Act.¹⁵

The PD also fails to evaluate CEJA's recommendations for improving transparency by requiring the additional disclosure of: (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.¹⁶ Disclosure of this information does not raise the confidentiality concerns articulated by the PD with respect to bid and offer information.

Truly meaningful enhancement of procurement reporting transparency cannot be achieved by parties operating in a black box. The Sierra Club and CEJA remain concerned about the Commission's failure to address the Open Meeting Act's application to PRG and procurement activities, and recommend that the following new Conclusion of Law and Ordering

¹³ See *id.* at pp. 20-21.

¹⁴ See Ca. Gov. Code §§ 11120 *et seq.* Under the Act, the PRG is a "state body" with delegated authority from the Commission that created it. Indeed, by instructing the PRG to devote a portion of its next meeting to the creation of a quarterly compliance reporting guide in its Proposed Decision and to provide comment on this effort, the Commission demonstrates again that the PRG was created by the Commission with delegated authority to carry out the Commission's objectives.

¹⁵ See *Regents of Univ. of California v. Superior Court* (2009) 20 Cal. 4th 509, 522-23 (the Open Meeting Act is designed to "prevent [] threatened violations of the act by members of a state body"; any interested person may bring an action "to determine the act's applicability to *threatened future* actions.... In this regard, it covers violations and actions *that are yet to occur*") (internal quotations omitted) (emphases in original).

¹⁶ See CEJA's Track III Comments.

Paragraph be added to the Commission’s Final Decision:

New Conclusion of Law: The Bagley-Keene Open Meeting Act, Cal. Gov’t. Code §§ 11120 et seq., applies to Procurement Review Group meetings.¹⁷

New Ordering Paragraph: The Commission shall require that the Procurement Review Group meetings comply with Bagley-Keene Open Meeting Act requirements, while also comports with procedures delineated in D.06-06-066 for identifying and protecting confidential information.¹⁸

IV. CEJA and Sierra Club Recommend Including the Public in the Efforts to Revise the Utilities Quarterly Reports.

As discussed above, the PD correctly and fairly acknowledges the “need for greater information access ... [and] aggregate[d] and publishe[d] reports for the public in the interests of managing transparency.”¹⁹ The PD attempts to meet this need by examining ways to improve the usability of the Energy Resource Recovery Account quarterly compliance filing requirements (QCR) by adopting a “cooperative” process for revisions.²⁰ Although improving the QCR filings could be a step in the right direction, the PD fails to adequately address how the public will be integrated into the planned improvements.

Instead, the PD only requires that utilities, along with PRG members, discuss the information currently submitted, “describing why the data is submitted ... to ensure that PRG members have had a chance to comment on the content and format of the QCRs for their purposes as PRG members.”²¹ CEJA and Sierra Club urge the Commission to include the public

¹⁷ This paragraph should follow Conclusion of Law No. 6.

¹⁸ This new Ordering Paragraph should precede Ordering Paragraph 5.

¹⁹ PD at p. 63.

²⁰ *See id.* at p. 24 (stating “Below in this decision we articulate a plan to reform certain data requesting guidelines, with an eye towards aggregating data via the quarterly compliance reports (QCRs) and reporting out that data in ways that are consistent and usable, while protecting market sensitive information.”).

²¹ *Id.* at p. 65.

in revisions to the QCR submissions by facilitating a workshop aimed at refining the content and format of the QCRs and by including a plain language summary at the beginning of the report.

The Commission should facilitate a workshop that includes representatives from all stakeholders including the utilities, the Commission, and the public. The purpose of this workshop should align with the purpose of revising the QCRs as outlined in the PD, namely to ensure “a chance to comment on the content and format of the QCRs.”²² Furthermore, inviting the public to participate in the workshops better equips the Commission to evaluate the type of information (i.e., content) presented and, more to the point, how it is presented (i.e., format) to facilitate meaningful public participation.

In addition to allowing the public to participate in the revision process, CEJA and Sierra Club urge the Commission to revise the language in the Proposed Decision to include specific mention that the QCR revisions benefit the public, not just PRG members. Including the public is consistent with the Commission’s 2010 LTTP decision, which increased public access to Commission audits of the QCR.²³

CEJA and Sierra Club also request that the Commission require a plain language summary at the beginning of the report to encourage meaningful public participation. The QCR contains valuable information about the IOUs’ transactions including their GHG instrument transactions,²⁴ but, as the PD acknowledges, “the information presented is complicated and voluminous.”²⁵ The public has a strong interest in information related to the IOUs’ activities. A summary of the information presented in the QCR will be a useful step to make the QCR more accessible and transparent.

²² *Id.*

²³ *See* D.12-04-048 at pp. 63-64.

²⁴ *See* D.12-04-048 at pp. 57-59 (requiring IOUs to report GHG transactions in their QCRs).

²⁵ PD at p. 62.

CEJA and Sierra Club recommend the following changes to the Conclusions of Law and Ordering Paragraphs to facilitate these changes:

Revised Conclusion of Law 6: It is in the public interest to promote greater reporting of the information that the Commission regularly collects from the utilities regarding procurement activities, either as aggregate or in specific, to the market and the CAISO, and to the public, to the extent that confidentiality is not compromised.

Revised Conclusion of Law 12: At this time, no changes to content or timing of quarterly compliance reports should be adopted, pending Energy Division review of opportunities to reduce such reporting to the most useful elements, to eliminate redundant reporting, and to create guidelines that enable consistency across the utility submissions. The Energy Division will also initiate a workshop with all stakeholders to discuss potential revisions to and a summary for the quarterly compliance report workshops to best achieve the goal of meaningful public participation.

Revised Ordering Paragraph 5: No later than ninety (90) days after the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall devote a portion of an upcoming Procurement Review Group meeting to creation of a quarterly compliance reporting guide similar to the guide for Resource Adequacy reporting and a summary to best facilitate meaningful public participation. The purpose of this effort and the workshop held by the Energy Division is to make the quarterly compliance report more accessible and help facilitate public participation.

V. CEJA and Sierra Club Request the Commission Take Steps to Ensure the Independent Evaluator's Independence.

Independent Evaluator (IE) oversight historically has been included in the procurement process to ensure “a fair, competitive procurement process free of real or perceived conflicts of

interest.”²⁶ Since the 2006 LTPP, the Commission has expressed concerns about the lack of IE independence.²⁷ Indeed, the Commission has repeatedly stated that IE independence “is of the utmost importance” and that “it would be preferable for IEs to be hired by and report to the Commission.”²⁸ Although the Commission did not address these concerns by modifying the IE hiring process in the 2010 LTPP, it stated that it intended to “consider this proposal [to directly hire the IEs] again.”²⁹ This PD does not fulfill that promise to reevaluate the proposal to hire IEs, nor does it take steps to increase IE independence through instruments such as a random selection process.³⁰ CEJA and Sierra Club believe this omission was an error given the import of IE independence in the procurement process.

Nevertheless, the PD does appear to agree that IOUs should not limit the IE’s interactions with the Commission.³¹ The PD found that there was no evidence of interference and concluded that “[n]ew rules facilitating IE interaction with the Commission are not necessary.”³² CEJA and Sierra Club believe that a Conclusion of Law reiterating that IOUs should not interfere with IEs’ communications with the Commission is necessary to prevent potential future problems. CEJA and Sierra Club respectfully request the Commission to include the following Conclusion of Law:

New Conclusion of Law: The IOUs shall not limit IEs’ interactions with the Commission in non-disclosure agreements or in any other way.³³

²⁶ D.07-12-052 at p. 140.

²⁷ *Id.* at p. 136.

²⁸ *Id.* at p. 136; R.10-05-006, (Apr. 24, 2012) at p. 68.

²⁹ R.10-05-006, (Apr. 24, 2012) at p. 68.

³⁰ PD at pp. 66-68.

³¹ *Id.*

³² *Id.*

³³ R.12-03-014, (Jan. 28, 2014) at p. 68.

CONCLUSION

For the foregoing reasons, CEJA and Sierra Club respectfully request that the changes highlighted above be made to the Proposed Decision.

Dated: February 18, 2014

Respectfully submitted,

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APPENDIX A

PROPOSED CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

CEJA and Sierra Club request the following modifications to the Conclusions of Law and Ordering Paragraphs of the Proposed Decision of ALJ Gamson:

- Added language is indicated by **underline**
- A new or added Conclusion of Law or Ordering Paragraph is preceded by the following language in **bold**: **NEW CONCLUSION OF LAW** or **NEW ORDERING PARAGRAPH**.

PROPOSED CONCLUSIONS OF LAW

Revised Conclusion of Law 2: The Public Utility Code Section 454.5(b)(9) requirement of “a showing that the procurement plan will fulfill its unmet resource needs from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the California Renewables Portfolio Standard Program” and that each utility “shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible” is ongoing. IOUs shall report their compliance with these requirements in their bundled procurement filings.

Revised Conclusion of Law 6: It is in the public interest to promote greater reporting of the information that the Commission regularly collects from the utilities regarding procurement activities, either as aggregate or in specific, to the market and the CAISO, and to the public, to the extent that confidentiality is not compromised.

New Conclusion of Law: The Bagley-Keene Open Meeting Act, Cal. Gov’t. Code §§ 11120 et seq., applies to Procurement Review Group meetings.³⁴

³⁴ This paragraph should follow Conclusion of Law No. 6.

Revised Conclusion of Law 12: At this time, no changes to content or timing of quarterly compliance reports should be adopted, pending Energy Division review of opportunities to reduce such reporting to the most useful elements, to eliminate redundant reporting, and to create guidelines that enable consistency across the utility submissions. The Energy Division will also initiate a workshop with all stakeholders to discuss potential revisions to and a summary for the quarterly compliance report workshops to best achieve the goal of meaningful public participation.

New Conclusion of Law: The IOUs shall not limit IEs' interactions with the Commission in non-disclosure agreements or in any other way.³⁵

PROPOSED ORDERING PARAGRAPHS

Revised Ordering Paragraph 1: Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the IOUs) shall estimate reasonable levels of expected Direct Access and Community Choice Aggregation departing load over the 10-year term of the IOUs bundled plans, using information provided by the California Energy Commission and/or by a Community Choice Aggregator in its Binding Notice of Intent. The IOUs shall update this estimate annually. The IOUs shall then exclude this departing load from their future bundled procurement plans, and only procure for the assumed amounts of retained bundled load. Having been excluded from the bundled portfolio planning scenarios, the forecasted Direct Access and Community Choice Aggregation departing load shall not be subject to non-bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans.

³⁵ R.12-03-014, (Jan. 28, 2014) at p. 68.

New Ordering Paragraph: IOUs shall report their compliance with Public Utility Code Section 454.5(b)(9) by certifying that no cost effective, reliable, and feasible preferred resources were available to meet the need for each transaction that does not involve a preferred or energy storage resource.³⁶

New Ordering Paragraph: The Commission shall require that the Procurement Review Group meetings comply with Bagley-Keene Open Meeting Act requirements, while also comports with procedures delineated in D.06-06-066 for identifying and protecting confidential information.³⁷

Revised Ordering Paragraph 5: No later than ninety (90) days after the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall devote a portion of an upcoming Procurement Review Group meeting to creation of a quarterly compliance reporting guide similar to the guide for Resource Adequacy reporting and a summary to best facilitate meaningful public participation. The purpose of this effort and the workshop held by the Energy Division is to make the quarterly compliance report more accessible and help facilitate public participation.

³⁶ This paragraph should follow the Proposed Decision's Ordering Paragraph No. 1.

³⁷ This new Ordering Paragraph should precede Ordering Paragraph 5.