

**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 REPLY COMMENTS ON THE TRACK III PROPOSED DECISION**

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Dated: February 24, 2014

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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 reply 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).<sup>1</sup> These reply comments are timely submitted pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure. As discussed in our initial comments, 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 support the PD’s requirement for a Tier II advice letter for medium-term bilateral contracts and recommend that the Investor Owned Utilities’ arguments against it be denied. Additionally, CEJA and Sierra Club support and echo the comments of Office of Ratepayer Advocates (“ORA”) requesting a workshop and public process for revising the QCR reports.

**I. The Proposed Tier II Advice Letter Requirement for Medium-Term Bilateral Contract Promotes Oversight and Transparency.**

The Proposed Decision justifiably requires a Tier II advice letter for medium-term bilateral contracts. The inherent nature of bilateral contracts raises the potential of conflicts of interest that are not raised by competitive bidding processes. The Commission has repeatedly recognized the inherent issues with bilateral contracts by requiring that utilities meet a heavy burden of showing that long-term bilateral contracts represent an approximation of a competitive solicitation.<sup>2</sup> Increasing oversight for medium term bilateral contracts via a Tier II advice letter thus addresses a recognized gap in “Commission oversight.”<sup>3</sup>

The Proposed Decision explains that the Commission provides “utilities and counterparties with little scrutiny of contracts of significant size with large cost implications,

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<sup>1</sup> 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.

<sup>2</sup> See, e.g., D.02-10-062, p. 34.

<sup>3</sup> PD, p. 40.

[and] this gap exposes ratepayer [sic] to more risk than is appropriate.”<sup>4</sup> The IOUs disagree vigorously arguing, among other things, that the Procurement Review Groups (“PRGs”) already provide sufficient oversight. However, PRG oversight is a black box review process that excludes the public.<sup>5</sup> PRG oversight also does not address the inherent problems created by a bilateral deal. The Tier II advice letter provides a reasonable amount of scrutiny for contracts negotiated by only two parties. Moreover, these medium-term bilateral contracts for 50 MW or greater will most likely be for gas resources, which are lower order resources. Requiring the Tier II advice letter thus provides an opportunity for parties and the public to ensure that the IOUs are complying with the loading order.

The IOU’s other arguments also do not withstand scrutiny. The IOUs uniformly argue that the QCR process is sufficient.<sup>6</sup> The QCR is not sufficient because it only includes aggregate after-the-fact data, not before-the-fact individualized review. SDG&E and SCE also attempt to argue that the 50 MW requirement is an arbitrary choice for triggering the advice letter requirement.<sup>7</sup> In fact, the 50 MW trigger is consistent with the Warren-Alquist Act that requires Energy Commission review of all thermal plants that are 50 MW or greater<sup>8</sup> and supports the Proposed Decision’s explanation that these type of plants have large cost implications. SCE further argues that the requirement is inconsistent with Public Utilities Code section 454.5, because it potentially conflicts with pre-procurement reasonableness review.<sup>9</sup> However, this argument does not comport with the actual language of 454.5, which explicitly discusses

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4 *Id.*

5 See, e.g., Office of Ratepayer Advocates’ Comments on Proposed Decision Modifying Long-Term Procurement Planning Rules, p.2 (explaining how the PRG excludes participation from certain entities).

6 Comments of San Diego Gas and Electric Company (U 902 E) on Track 3 Proposed Decision Modifying Long-Term Procurement Planning Rules (“SDG&E Comments”), p. 7; Southern California Edison Company’s (U 338-E) Comments on Proposed Decision Modifying Procurement Rules (“SCE Comments”), p. 6; Pacific Gas and Electric Company’s (U 39 E) Comments on Track 3 Proposed Decision, p. 7.

7 SDG&E Comments, p. 6; SCE Comments, pp. 6-7.

8 Pub. Res. Code § 25120, 25123, 25502.

9 SCE Comments, p. 8.

subsequent review.<sup>10</sup> Indeed, pursuant to the Code’s language, the Commission does not have to approve procurement in its after procurement review.<sup>11</sup>

CEJA and Sierra Club support the Tier II advice letter for medium-term bilateral contracts because it provides an added level of oversight for these bilateral arrangements.

**II. ORA and TURN Agree With CEJA and Sierra Club That the Commission Should Create a Public Process to Revise the QCR Submissions.**

ORA’s, CEJA’s and Sierra Club’s comments support a stakeholder process for improving the QCR reports. In their opening comments, CEJA and Sierra Club “urge[d] the Commission to include the public 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.”<sup>12</sup> Similarly, “ORA supports initiating a process to revise the QCRs and develop a QCR Guide, but recommends modifying and clarifying the PD’s process to allow stakeholder participation and establish a deadline for Commission approval of the QCR Guide.”<sup>13</sup> ORA explains that “[t]he PRG is not the appropriate forum to propose changes to the QCRs since PRG meetings exclude some stakeholders in order to allow for the consideration of market sensitive information.”<sup>14</sup> The Utility Reform Network (“TURN”) also supports the Proposed Decision’s goal of public transparency and recommends including consideration of the “public” in the QCR process.<sup>15</sup> CEJA and Sierra Club further request that any workshops conducted to improve the QCR process be conducted in multiple locations so that the interested public in areas of Southern California may also participate.

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<sup>10</sup> Pub. Utilities Code § 454.5(e)

<sup>11</sup> See, e.g., Pub. Utilities Code § 454.5(c)(3) (“The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan”).

<sup>12</sup> California Environmental Justice Alliance’s and Sierra Club California’s Comments on the Track III Proposed Decision, pp. 6-7.

<sup>13</sup> Office of Ratepayer Advocates’ Comments on Proposed Decision Modifying Long-Term Procurement Planning Rules, p.2.

<sup>14</sup> *Id.*

<sup>15</sup> Opening Comments of The Utility Reform Network on the Proposed Decision of ALJ Gamson in Track 3 of the 2012 LTPP, pp. 2-3.

## CONCLUSION

For the foregoing reasons, CEJA and Sierra Club respectfully request that the Proposed Decision retain the Tier II advice letter for medium-term bilateral contracts and create a public process for improving the QCR reports.

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Respectfully submitted,

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