

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

COMMENTS OF THE PROTECT OUR COMMUNITIES FOUNDATION

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Protect Our Communities Foundation (“POC”) submits the following Comments on the Proposed Decision for proceeding R.12-03-014.

Pursuant to Rule 14.3(c), these Comments identify the following factual, legal, and technical errors in the Proposed Decision (the “PD”): (1) the PD errs in approving procurement based on CAISO’s use of the Sunrise Powerlink / Southwest Powerlink N-1-1 as the limiting critical contingency for the San Diego Local Area without establishing the reasonableness of N-1-1; (2) the PD errs in striking POC’s legal arguments regarding the reasonableness of N-1-1; (3) the PD errs in deferring to CAISO on the legal issue of whether N-1-1 is required by mandatory WECC rules; and (4) the PD errs in finding “no credible basis” upon which to find that the ISO’s analysis is flawed.

II. THE PD'S PROCUREMENT AUTHORIZATIONS ARE BASED ON THE ERRONEOUS APPROVAL OF N-1-1

The Proposed Decision approves 500 MW to 700 MW of new local resource procurement by San Diego Gas and Electric (“SDG&E”),¹ and 500 MW to 700 MW of new local resource procurement by Southern California Edison (“SCE”).² This procurement authorization is based on modeling conducted by CAISO, with some modifications to CAISO’s modeling results based on “exogenous factors” such as the availability of load shedding.³

CAISO’s modeling is driven, in significant part, on its decision to use N-1-1 as the limiting critical contingency for the San Diego local area. Under federally mandated reliability rules enforced by the Western Electricity Coordinating Council (“WECC”), transmission planners are required to procure additional resources over and above those required to meet peak customer demand.⁴ The purpose of this redundant procurement is to ensure that sufficient “backup” resources are in place to ensure system stability (with or without load shedding) in the event of transmission and generation outage events (referred to as “contingencies”).⁵ The amount of procurement needed to satisfy these reliability rules is determined by a local area’s “limiting critical contingency” – the most severe outage event that is reasonably likely to occur.

With the exception of a small handful of recent proceedings,⁶ CAISO, SDG&E, and the Commission have always used G-1/N-1 without load shedding as the limiting critical contingency for the San Diego local area. “G-1” is loss of the largest single generator in SDG&E’s service territory. “N-1” is the loss of the largest single transmission line in SDG&E

¹ Proposed Decision 2013-01-138

² Proposed Decision 2013-01-137

³ Proposed Decision 2013-01-48

⁴ PDC 1 (Peffer Opening Testimony), Exhibit 26 and Exhibit 7.

⁵ SDC 1 (Powers Opening Testimony) at p. 1.

⁶ See D. 08-024, D. 10-015, and D. 10-030.

territory. G-1/N-1 in SDG&E service territory is specifically defined by SDG&E and CAISO as the loss of the SDG&E’s largest transmission line, the 500 Kv Southwest Powerlink, when the 604 MW Otay Mesa combined cycle power plant is offline and unavailable. G-1/N-1 is CAISO’s official transmission planning standard, having been publically vetted and formally adopted by the CAISO board.⁷

In this proceeding, CAISO’s modeling is driven by the use of an unofficial, un-vetted N-1-1 limiting critical contingency for the San Diego area. N-1-1 is defined as the outage of the SDG&E area’s two largest transmission lines, the 500 kV Southwest Powerlink and the 500 kV Sunrise Powerlink, with a brief period for system readjustment between the outages.

The PD’s finding of need and resultant procurement authorization are largely driven by CAISO’s use of N-1-1 rather than G-1/N-1 in its modeling. By using N-1-1, CAISO inflated the projected San Diego area need by at least 400 MW.⁸ Using N-1-1 also inflated the need determination for SCE’s Los Angeles local area, as the CAISO model assumes that a “surge” caused by the N-1-1 event in SDG&E territory redirects thousands of MW through SCE territory that lead to grid reliability violations. The PD addresses the grid reliability repercussions of the N-1-1 planning assumption with new allocations of 500 to 700 MW in both SCE and SDG&E territory. . If the G-1/N-1 standard contingency is assumed, SDG&E retains a 500 kV link to the east and no surge of electricity flows into SCE territory during the limiting contingency. As a result, there is no justification for new procurement in the Track 4 LTPP.⁹ The cost to ratepayers of procuring this additional capacity will likely run into the billions of dollars.

The Commission has a statutory duty to ensure that rates are just and reasonable.¹⁰

⁷ [SDC 010001 \(Peffer Opening Testimony\) 11/1/14](#)

⁸ [SDC 0000 Opening Testimony 11/1/14](#)

⁹ [SDC 010001 \(Wers Opening Testimony\) 11/1/14](#)

¹⁰ [Public Utilities Code Section 451.](#)

For the N-1-1 driven procurement authorization reached in this proceeding to be valid, and the rates driven by this authorization to be just and reasonable, the Commission must first find that the use of N-1-1 is reasonable, either because using N-1-1 is legally required, or because cost of the additional generation is just and reasonable (presumably because the reliability benefits to ratepayers gained from using N-1-1 outweigh the costs of procuring the significant additional generation that using N-1-1 entails).

III. THE PROPOSED DECISION ERRS IN STRIKING POC'S LEGAL ARGUMENTS REGARDING N-1-1

The Proposed Decision commits a significant error in striking significant legal arguments regarding the reasonableness of N-1-1 raised by POC in its Opening and Reply briefs. As background, on November 4, 2013, POC submitted a motion for Judicial Notice of three official WECC documents identified as POC-4, POC-5, and POC-6:

- ∞ POC-4: WECC's "Reliability Performance Evaluation Work Group Phase 1 Probabilistic Based Reliability Criteria Implementation Procedure."
- ∞ POC-5: WECC's "Seven Step Process for Performance Category Upgrade Request" dated October 2004.
- ∞ POC 6: WECC Board of Directors Request Regarding Performance Category Upgrade Request, dated February 20, 2013.

These documents set forth the WECC PBRC process, an official WECC regulatory policy.

In a November 14, 2013 email ruling, ALJ Gamson denied POC's Motion, ruling that "Exhibits POC-3, POC-4, and POC-5... will not be admitted into evidence in this proceeding."

A day later, on November 15, 2013, ALJ Gamson issued a corrected ruling clarifying that the ruling applied to the documents submitted in POC's Motion for Judicial notice, Exhibits POC-4,

POC-5, and POC-6, and not Exhibit POC-3 (which had already been accepted into the record at the evidentiary hearings as Exhibit POC X CAISO 3).¹¹

On December 4, 2013, SCE and SDG&E filed a joint motion to strike a significant portion of POC's opening brief, citing ALJ Gamson's *uncorrected* November 14 ruling¹² and arguing that sections of POC's opening brief relating to POC-3, POC-4, and POC-5 should be stricken because they "rely on... materials specifically excluded from the evidentiary record in this proceeding."¹³ On December 20, 2013 the Joint Utilities filed a nearly identical Motion to Strike portions of POC's Reply Brief.

POC timely responded to both Motions to Strike. In its Responses, POC explained that the Joint Utilities had erroneously cited the uncorrected ruling, and that their objections to POC's arguments relating to POC 3 were in error because that exhibit was properly included in the record and was not stricken by ALJ Gamson's corrected ruling.¹⁴ POC further explained that the briefs had properly cited the documents identified as POC-4 and POC-5 as legal authorities cited to establish a principal of law, not exhibits "offered to prove the existence or nonexistence of a fact."¹⁵

As POC explained in its Responses, POCs briefs properly cited to WECC's PBRC documents as legal authorities. WECC's planning rules and policies are part of a comprehensive transmission planning regulatory scheme implemented by the FERC, NERC, and WECC. Pursuant to the Federal Power Act, FERC has delegated its regulatory authority regarding reliability standards to NERC, which in turn has delegated this regulatory authority to WECC. FERC explains the relationship between FERC, NERC, and WECC as follows:

¹¹ POC's Response to Joint Motion to Strike, filed at p. 15.
¹² Joint Motion to Strike, December 4, 2013 at p. 2.
¹³ Joint Motion to Strike, at p. 2.
¹⁴ POC's Response to Motion to Strike, p. 4.
¹⁵ at p. 8, citing Cal. Evid. Code Section 140.

The Energy Policy Act of 2005 (EP Act 2005) Established section 215 of the Federal Power Act, which authorized the Federal Energy Regulatory commission (Commission or FERC) to certify an Electric Reliability Organization (ERO) for the purpose of proposing reliability standards for the bulk-power system in the continental United States subject to the Commission’s approval. After they are approved by the Commission, the standards are mandatory for the users, owners, and operators of the bulk power system and are enforced by the ERO under the Commission’s oversight. The statute also authorized the ERO to delegate enforcement authority to a Regional Entity, subject to Commission approval. In July 2006, the Commission certified the North American Electric Reliability Corporation (NERC) as the ERO. And on June 5, 2007, the Commission accepted executed agreements between NERC and eight Regional Entities, including the Western Electricity Coordinating Council (WECC), in regard to the delegation of NERC’s ERO standards development and enforcement authorities to such entities.¹⁶

Thus, for utilities within WECC’s jurisdiction, WECC exercises federal regulatory authority regarding the establishment, implementation, and enforcement of reliability standards and related policies.

POC’s responses further explained that the documents identified as POC-4 and POC-5 set forth WECC’s Probabilistic Based Reliability Criteria process, an official WECC process for making individual probabilistic exceptions to federally mandated NERC/WECC contingency categorizations, and that as an official WECC policy with the force of regulatory law, it is appropriate to cite the PBRC process documents as authorities.¹⁷

The PD thus commits significant errors in granting the Joint Motion to strike POC’s Opening Brief. The PD states:

POC filed a response to the Joint Motion arguing that the Joint Motion was overly broad and that some of the materials that were requested to be stricken properly relied upon evidence in the record.

POC’s Response belies the content of its Opening Brief. In fact, the sections referenced in the Joint Motion discuss the stricken exhibits POC-4, POC-5... The Joint Motion is thus granted, and the referenced portions of the POC Opening

¹⁶ POC-1 (Powers Opening Testimony), Ex. 1, pp. 1

¹⁷ POC Response to Motion to Strike at p. 9

Brief are stricken.¹⁸

Conclusion of Law 54 states:

The SCE and SDG&E Joint Motions to Strike the Opening Brief and Reply Brief of the Protect Our Communities Foundation should be granted because the brief is substantially based on non-record evidence.¹⁹

The PD thus errs in granting the Joint Utilities motions to strike discussion of POC-3, which is part of the evidentiary record. The PD further commits an error of law in granting the motion to strike the Briefs' discussion of POC-4 and POC-5, which were properly cited as legal authorities.

IV. THE PROPOSED DECISION ERRS IN DEFERRING TO CAISO ON AN ISSUE OF REGULATORY LAW

The Proposed Decision commits a major error of law in deferring to CAISO on a clear issue of regulatory law that falls well within the Commission's expertise, jurisdiction, and regulatory mandate: whether CAISO's use of the Sunrise/SWPL N-1-1 is reasonable because it is required by legally mandatory WECC reliability standards.

In this proceeding, CAISO and the Utilities have presented only one substantive justification for the use of N-1-1: the claim that using the Sunrise/SWPL N-1-1 as the limiting critical contingency is required to comply with mandatory WECC standards. Specifically, CAISO and the utilities argued that the Sunrise/SWPL N-1-1 is the most severe WECC "Category C" contingency for the San Diego local area, and as such the use of the Sunrise/SWPL N-1-1 as the limiting critical contingency is required by mandatory WECC reliability standards.²⁰

¹⁸ Proposed Decision at p. 20.

¹⁹ Proposed Decision at p. 136.

²⁰ See SDG&E Opening Brief and CAISO Opening Brief, pp. 19

In response, both POC²¹ and the Sierra Club²² have argued that the WECC has an official process in place that, if pursued, would obviate any need to use N-1-1 as the limiting critical contingency. This process, known as the Probabilistic Based Criteria Review (“PBRC”) process, allows the recategorization of the Sunrise/SWPL N-1-1 from a WECC “Category C” event WECC “Category D” event.²³ While WECC rules require that Category C events be mitigated, Category D events are considered sufficiently unlikely to not warrant mandatory mitigation.²⁴ Thus, if the PBRC process were applied to the Sunrise/SWPL N-1-1, it would no longer be valid to use N-1-1 as the limiting critical contingency. This renders moot CAISO and the Utilities’ sole argument for the reasonableness of N-1-1, as the availability of the PBRC process means that the use of N-1-1 is not legally required.

Whether or not the use of N -1-1 is reasonable because it is required in order to comply with mandatory WECC standards is a clear issue of regulatory law. As discussed above, for utilities within WECC’s jurisdiction, WECC exercises federal regulatory authority regarding the establishment, implementation, and enforcement of reliability standards and related policies. Thus, the question of whether N-1-1 is a Category C contingency that must be used as the limiting critical contingency for the San Diego area (as the Utilities contend) or whether the PBRC process is available to recategorize N -1-1 as a Category D contingency (as POC and the Sierra Club have contended) is an issue of law.

The PD fails to address this clear issue of regulatory law on its merits. Instead, the PD justifies the use of N-1-1 on the grounds of deference to CAISO. The PD describes several recent decisions where “we defer to ISO regarding power flow modeling” before concluding “we

²¹ POC Opening Briefing, p. 11

²² Vol. 13, p. 192 lines 12

²³ Vol. 13, p. 192 (Powers Cross Examination).

²⁴ POC (Peffer Opening Testimony), Exhibit 7

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will use the ISO power flow models as the basis for this decision.” As established below, this deference constitutes an unconstitutional delegation of Commission authority, and the PD’s attempts to justify this deference are fatally flawed and must be rejected.

A. The Commission may not defer to CAISO

In deferring to CAISO on the reasonableness of N-1-1 the PD commits a major error of law: the Commission may not delegate its regulatory authority and duties to CAISO, nor defer to CAISO on issues within the Commission’s regulatory mandate.

The California Constitution provides that only the State Legislature has the power to define the Commission’s authority and jurisdiction.²⁵ Pursuant to this power, the Legislature passed the California Public Utilities Act,²⁶ which defines the Commission’s jurisdiction, authority, and duties. One of the areas that the Legislature has defined as falling within the scope of the Commission’s subject matter jurisdiction and regulatory mandate is the duty to ensure that utility rates are just and reasonable.²⁷ Because the Legislature has “plenary power” to define the Commission’s powers, only the Legislature has the power to excuse the Commission from exercising its own independent judgment regarding issues of reasonableness. The PD’s attempt to “defer” to CAISO regarding the reasonableness of N-1-1, essentially substituting CAISO’s judgment for the Commission’s, is thus an act in excess of the Commission’s authority and an act in violation of the California Constitution.

B. The PD’s justifications for deference to CAISO are not valid.

The PD presents three justifications for its deference to CAISO: (1) a precedent of deference to CAISO, (2) CAISO’s modeling performed consistent with the revised scoping

²⁵ Pursuant to Article 12, Section 5 of the California Constitution, “[t]he Legislature has plenary additional authority and jurisdiction upon the subject matter.”

²⁶ California Public Utilities Code Section 2010001 et seq.

²⁷ Public Utilities Code Section 4510001

memo, and (3) interpretations of WECC regulations are more within the CAISO's expertise than the Commissions. Each of these justifications is in error.

i. Prior Decisions do not justify deference to CAISO regarding N-1-1

The PD attempts to justify its deference to CAISO by framing the PD as the continuation of a line of Decisions in which the Commission deferred to CAISO regarding the legal interpretation of mandatory WECC planning standards:

Yet, the Commission has consistently relied on ISO transmission planning studies which use the ISO's methodology and interpretation of Category C and D contingencies. This is seen in decisions including the 2013 RA decision (D.13-06-024), the Track 1 LTPP decision in this docket (D.13-02-015), and our recent SDG&E procurement-related decision (D.13-03-029). In these decisions we defer to the ISO regarding power flow modeling.²⁸

Similarly, Conclusion of Law 13 states:

In decisions including D.13-06-024, D.13-02-029, D.13-03-029, the Commission has deferred to the ISO regarding power flow modeling.²⁹

This claim is in error. None of the cited Decisions addresses the broad issue raised by POC and other parties in this proceeding – whether the use of the Sunrise/SWPL N-1-1 as the limiting critical contingency for the San Diego Local Area is *reasonable*, much less the specific legal issues regarding WECC contingency categorization and the applicability of the PBRC process. The PD fails to provide a single citation to the records from those proceedings showing that any of these issues were raised was even raised, much less fully adjudicated and resolved subject to appropriate findings of fact and law. A review of the records from those proceedings makes clear that these issues were *not* raised, adjudicated, or resolved by findings of fact or law in any of the cited proceedings. Because the reasonableness of N-1-1 remains an open issue left

²⁸ Proposed Decision at 48 pp. 47

²⁹ Proposed Decision at p. 132

unresolved by the cited decisions, the PD’s citations establish neither a principal of deference to CAISO regarding N-1-1, nor a prior resolution of the question of N-1-1’s reasonableness.

The PD’s reliance on the cited decisions is also flawed because the Commission is not bound by its Decisions from prior proceedings. In the evidentiary hearings in this proceeding, ALJ Gamson himself recognized that D.13-03-029, one of the three decisions cited in the PD, is “interesting” but “not binding.”³⁰

ii. CAISO’s modeling results are not binding on the Commission

The PD further errs in justifying its deference to CAISO on the grounds that “[t]he ISO power flow modeling was performed consistent with the revised Scoping Memo”³¹ and that “Changing a Category C contingency to a Category D contingency would directly change the ISO model output.”³²

Although the revised Scoping Memo does set forth certain modeling assumptions, it makes no mention of limiting critical contingency, WECC categorization, or any of the other issues raised here. Thus, the revised Scoping Memo assumptions are irrelevant to determining the reasonableness of using N-1-1 as the limiting critical contingency for the San Diego area.

Further, the PD errs in implying that CAISO’s modeling results are somehow binding on the Commission. The PD cites no regulation, statute, or other principal of law to support this claim. Treating CAISO’s modeling as binding would make it effectively impossible for the Commission to fulfill its regulatory duty to ensure that rates are just and reasonable, as the need determination reached here is driven primarily by CAISO’s modeling. Further, treating CAISO’s modeling as binding would violate the substantial rights of the parties, as CAISO’s

³⁰ PD, Finding of Fact 31, at p. 22. See also PD, Finding of Fact 31, at p. 22. See also PD, Finding of Fact 31, at p. 22.

³¹ PD, Finding of Fact 11, at p. 11. See also PD, Finding of Fact 11, at p. 11.

³² PD, Finding of Fact 31, at p. 31. See also PD, Finding of Fact 31, at p. 31.

assumptions and inputs are not adopted through a full evidentiary process with discovery, cross-examination, and basic procedural safeguards for parties (and ratepayers).

iii. Deference to CAISO is not justified by the Commission’s lack of expertise

The PD’s Finding of Fact 32, which states that “issues regarding whether an ISO-determined Category C contingency should instead be functionally a Category D contingency under WECC reliability standards are more within the expertise of the ISO than the Commission”³³ is also flawed. The interpretation of WECC standards is not some arcane technical or policy issue that the Commission lacks the capacity to understand. Rather, as discussed above, the interpretation and application of WECC standards and the PBRC process is a clear issue of regulatory law, an area where the Commission has ample expertise. This claim is further undermined by the fact that the Commission itself is an active member of WECC.

V. THE PROPOSED DECISION ERRS IN FINDING “NO CREDIBLE BASIS” FOR REJECTING THE ISO’S ANALYSIS REGARDING N-1-1

The PD makes a significant error in finding “no credible basis upon which to find that the ISO’s analysis is flawed and that the limiting contingency for the SONGS study area is anything but the N-1-1 Category C3 SWPL/Sunrise overlapping outage assumed and modeled by the ISO.”³⁴ This finding is in error for two reasons.

First, this finding wrongly allocates the burden of proof. California Public Utilities Code Section 454 states, in part, that: “a public utility shall not charge any rate or so alter any classification, contract, practice, or rule as to result in any new rate except upon a

³³ Proposed Decision at p. 122

³⁴ Proposed Decision at p. 48

showing before the commission and a finding by the commission that the new rate is justified.”

The Commission has embraced this statutory rule as a fundamental principle of

Commission practice:

...the fundamental principle involving public utilities and their regulation by governmental authority [is] that the burden rests heavily upon a utility to prove that it is entitled to rate relief and not its Staff, or any interested party or protestant, such as TURN, to prove the contrary.³⁵

A utility applicant seeking to meet its statutory burden of proof must make a substantial affirmative showing in support of all elements of its application:

Of course the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered. We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application.³⁶

Thus, it is the utility applicants and CAISO who bear the burden of proving that the use of N -1-1 is reasonable, and the parties challenging N -1-1 are not required to establish a credible basis for finding that the ISO’s analysis is flawed.

Second, in when the correct burden of proof is applied, it is clear that CAISO and the utilities have failed do develop a sufficient evidentiary record to establish that the use of N-1-1 as the limiting critical contingency for the San Diego area is reasonable . In this proceeding, the only argument that CAISO and the Utilities provided in support of the reasonableness of N-1-1 is the claim that using N-1-1 is required to comply with mandatory WECC standards. POC and the Sierra Club have responded by arguing that because WECC’s PBRC process is available to recategorize N-1-1 from Category C to Category D, using N-1-1 is not legally required. It is uncontested that the PBRC exists as an official WECC policy, and that its function is to allow the

³⁵ Southern California Edison Company (1983) 105-0680, 2d 474, 475; D.83

³⁶ California Energy Adjustment Clauses (1980) 4 CPIC 2d 693, 701; D.92496

recategorization of contingencies.³⁷ In cross-examination, CAISO and the utilities offered conflicting testimony as to whether the PBRC is applicable to the specific Sunrise/SWPL N-1-1.

In cross-examination CAISO Witness Sparks testified that:

THE WITNESS [Mr. Sparks]: As I described, it [the PBRC process] applies to – I’ve seen it in examples applied to single contingencies being reclassified as Category C and sometimes it can reclassify double contingency to Category B. I’ve never seen it [the PBRC process] applied to Category C3, but I suppose it could be.^{38 39}

In contrast, in cross-examination SDG&E witness Jontry claimed that PBRC reclassification was not available for N-1-1 contingencies.⁴⁰ However, neither witness Jontry nor any other party to this proceeding has provided a single citation to WECC policy to support the claim that the PBRC process is not available for N-1-1. To the contrary, as discussed above, SDG&E and SCE aggressively opposed POC’s attempts to include the official PBRC documents in the record through judicial notice, and moved to strike those portions of POC’s briefs that discuss and cite to the official WECC PBRC documents. Nothing in the official WECC PBRC documents would exclude N-1-1 from PBRC treatment.

SDG&E’s claim that PBRC is not available for this N-1-1 is further contradicted by SDG&E’s own application for a PBRC recategorization of a nearly identical N-2 contingency (defined as a simultaneous outage) involving the exact same two lines – the Sunrise Powerlink (which was at the time a proposal) and the Southwest Powerlink.⁴¹ SDG&E has failed to provide any evidence or cited any authority to establish that PBRC recategorization is available for the

³⁷ See Transcript p.1559, line 14, to p.1560, line 22 (Sparks) and Transcript p.1773, (Jontry)

³⁸ Tr. Vol. 11, p. 1627 lines 15

³⁹ Witness Sparks further claimed that CAISO was moving towards eliminating the PBRC process, but to provide any detail or support for this claim. See Tr. Vol. 11, p. 1562, line 21

⁴⁰ Tr. 1775

⁴¹ PG&E

