

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and
Program Coordination and Integration in Electric Utility
Resource Planning.

Rulemaking 04-04-003
(Filed April, 2004)

Pre-Workshop Comments of the Silicon Valley Leadership Group

On the Assigned Commissioner's Ruling

"Regarding Next Steps in Procurement Proceeding"

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**COMMENTS OF THE SILICON VALLEY LEADERSHIP GROUP
ON THE ASSIGNED COMMISSIONER'S RULING REGARDING
NEXT STEPS IN PROCUREMENT PROCEEDING**

The Silicon Valley Leadership Group appreciates the opportunity to comment on the proposed scope and timing of the 2006 Long-Term Procurement Planning proceeding. We do so recognizing that this will prove to be a highly significant proceeding. It will implement, for better or worse, many of the new policies and regulations recently adopted; and it will deliberate and resolve the remaining key issues that must be tackled in order that long term procurement advance such goals as resource adequacy. The outcome of this proceeding will have lasting impacts on the cost and reliability of electricity for years to come.

1. Thoughts about High Level Issues to be Addressed

As stated on page 5 of the ACR, “the future procurement proceeding will be the forum to consider a wide range of LTPP issues.” An issue that we think is of critical importance but does not appear in the initial list of issues to be considered is the efficacy of the hybrid market—has it and can it deliver results? We strongly recommend that this topic be revisited in the future proceeding. This recommendation follows from our judgment

that, under the framework of the hybrid market¹, investment in new power plants has been scarce.

We believe investors are wary of putting their money into California because the market rules are becoming increasingly complex and because there is an increasing drift toward a de-facto re-establishment of the regulatory regime.

The hybrid market puts into conflict the utilities' obligation to serve, which compels them to make long term financial commitments, and the desire of end users to shop for electricity supplies from the utilities' competitors. Our opinion is that trying to balance these legitimate but conflicting needs with more and more "fixes"-- new policies and regulations designed to level the playing field-- has only created more complexity in the market rules.

It is also our opinion that a hybrid market, without an enormous amount of effort, cannot stay in equilibrium for long and will tip one way or another. Indeed it seems apparent to the SVLG that it is tipping back toward a regulatory framework. Certainly, this is not the direction in which the voters would have the state move, given the overwhelming rejection of Proposition 80. It is likewise not consistent with the Commission's own strong preference for procurement of electricity supplies via the competitive market as was expressed in D.04-12-048. We think that it is important to include a review of this "policy drift" within the scope of the future proceeding (another way of saying, let's review the hybrid market and where it is taking us.)

2. Comments on the ACR

- a. We are pleased to read on page 5 of the ACR that the future proceeding will include a large number of related issues. From our point of view, this

¹ The relevant feature of the hybrid market for this discussion is that one set of power plant owners (independent generators) get their revenues from the competitive market, whereas another set (the IOUs) receive revenues from cost of service treatment. This leads, we think, to unequal treatment in the procurement process.

consolidation is welcome because following the large number of proceedings at the Commission has proven to be beyond our means.

- b. The ACR discusses other procurement planning issues on page 6. We would like to recommend that these issues be tackled in a certain order and that the first order of business is to establish definitively for the record the extent to which new generation is needed. In our opinion a forecast is not definitive unless it is constructed on a “bottoms-up” basis, relying upon information provided by the IOUs and other Load Serving Entities. If confidential information is used, all parties should be able to review it without undue restrictions. As we stated at the outset of our comments, this proceeding will have long lasting impacts on our member companies. For this reason we should not be excluded from meaningful participation because the information relied upon to reach decisions was not accessible.

Having forecasted the extent, location, and duration of projected shortfalls, the next step would be to consider appropriate remedies. We agree with the thoughts expressed in item #1 of page 6 that temporary as well as permanent remedies should be considered. It should not be presumed that IOU ownership of a new power plant is the only remedy, especially since this will affect other policies such as retail choice and is contrary to the Commission’s own commitment to a procurement process that is based upon all-source, open bidding.

- c. We recommend that careful attention be paid to the impact that the LTPPs and the decisions embedded in them have on other important policies. Retail choice is of particular importance to the member companies of the SVLG and we are concerned that certain outcomes, such as a decision to approve plans for IOUs to build new power plants and “socialize” the cost among all users, will prove destructive to the future viability of retail choice. One reason would be the

creation of multiple non-by-passable charges (NBCs) the amount and timing of which would be highly uncertain.

3. Comments on the Staff Draft Proposal for Long-Term Procurement Planning Proceeding Work Plan

Our comments on the Staff's draft proposal are consistent with the comments made above.

- a. We wholeheartedly agree with the Staff's proposal in Part III.1.a (Establishing Factual Need for New Generation, page 3) that the need for new generation must be factually and definitively established and that this is the first step in the process. This is necessary for the outcomes of the proceeding to be acceptable to all parties. We believe that the CEC's forecasts are not sufficient because they do not use a bottoms-up methodology whereby each LSE submits its forecasted need. We do think that the need for new generation should be derived on a local basis to be consistent with resource adequacy showings. We do not believe that Ordering Paragraphs 4&5 of the Commission's decision in D.04-12-048 are necessarily applicable given changing circumstances and conflicting opinions about the extent of the need for new generation.
- b. We do not think that it is at all appropriate to contemplate having the IOUs build new generation on behalf of all customers, as proposed in Part III.1.a (Temporary and/or Permanent Mechanism..., page 3). This would be contrary to the All-Source Solicitation process adopted by the Commission in D.04-12-048 and, as we see it, to the desires expressed by the voters when they rejected Proposition 80. Moreover, new IOU-owned generation would lead to potential non-by-passable charges (as there might be for Mountainview and Contra Costa 8) that would provide a significant economic barrier to the restoration of a retail choice, an equally important state policy.

One final comment here. It seems to us that the discussion of allocating costs of new IOU generation to all end users, lest there be free riders who do not contribute to the cost of maintaining reliability, is based upon the hidden assumption that other LSEs will not be resource adequate. This needs to be fully recognized since it is a contentious idea to say the least.

- c. Finally, it appears that the Staff may be asking the same questions as we are when it writes in Section 3 (Updates to IOU Procurement Policies and Practices, pages 10 and 11) that

*“Questions that may be considered in this part of the proceeding include:
(bullet #8) Evaluation of the Level Playing Field in IOU procurement (i.e.,
contracting for utility owned generation vs. power purchase agreements.)”*

If the state is to have a hybrid market, then we couldn't agree more that this is an important question to be asking. However, we think that attempts to level the playing field in a hybrid market means applying the same rules to both regulated and unregulated entities. Ultimately this will prove to be unfair to all parties and lead to more and more “fixes.”

We look forward to the upcoming discussions on these very important matters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day serviced an electronic copy of the Pre-Workshop Comments of the Silicon Valley Leadership Group on the Assigned Commissioner's Ruling "Regarding Next Steps in Procurement Proceeding" upon each person designated on the official services list compiled in this proceeding.

Dated at Mendocino, CA on this 12th Day of December, 2005.

/s/

John Redding