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**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 10-05-006
Filed May 6, 2010

**COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION
ON PRELIMINARY SCOPING MATTERS**

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June 4, 2010

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OF THE STATE OF CALIFORNIA**

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**COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION
ON PRELIMINARY SCOPING MATTERS**

The Energy Producers and Users Coalition (EPUC)¹ submit these comments on the preliminary scope of Rulemaking 10-05-006 pursuant to the schedule set in the Order Instituting Rulemaking (OIR) issued May 6, 2010.

I. INTRODUCTION AND SUMMARY

The OIR directs that the long term procurement planning effort will be informed by determinations made in multiple other dockets and final decisions, but it should not result in re-litigation of those issues. This determination, while wisely seeking to avoid re-opening of decided matters, could prove problematic where policy is decided but implementation efforts are ongoing, most notably for Combined Heat and Power (CHP) resources.

¹ EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., Shell Oil Products US, Exxon Mobil Corporation, THUMS Long Beach Company, and Occidental Elk Hills, Inc.

These comments raise two concerns regarding the preliminary scope and initial ruling:

- (1) Established Commission decisions and policies regarding CHP need to be incorporated in long term procurement planning standards and modeling: and
- (2) Statements that “*access to disaggregated market data may be restricted to non-market participants who sign a non-disclosure agreement*” troublingly fail to reflect the Commission’s current confidentiality policy, *i.e.*, that market participants may have access to confidential data through reviewing representatives.

To address the first concern, that long term procurement planning should incorporate the Commission’s established CHP policy, the following should be within scope and used in the planning standards:

- ✓ “Required base case assumption” for each “required scenario” should reflect retention of 4,596 MW of existing CHP capacity by the IOUs, and
- ✓ Required “Need Level” sensitivity analysis should reflect a range of new CHP procurement, with 4,000 MW of new CHP as the optimistic “Low Need” sensitivity analysis and 2,240 MW of new CHP as the more conservative “High Need” sensitivity analysis.

The sources for the required base case assumption of 4,596 MW of existing CHP capacity are Decision 07-09-040, Decision 07-12-052, and the IOUs’ public Qualifying Facility reports on cogeneration. Challenges to this established Commission order and known quantity of existing capacity should not be within the scope here, but implementation of this order and the known quantity of existing capacity should be within the scope.

The sources for the range of incremental new CHP as a required “Need Level” sensitivity analysis are the California Air Resources Board (CARB) Scoping Plan and the California Energy Commission’s 2009 Integrated Energy

Policy Report (IEPR). CARB's Scoping Plan contemplated "at least" 4,000 MW of new CHP capacity by 2020 and the, 2009 IEPR identified 2,240 MW of potential new CHP as reasonably achievable by 2020.² Unlike the known, approved quantity of existing CHP capacity to be retained that should be an unchanging, required base case assumption, the range of incremental new CHP capacity for the "Need Level" sensitivity analysis should serve as a placeholder. This placeholder is offered with the understanding that it will be informed by either the ongoing QF settlement process³ or a subsequent CHP-specific rulemaking.

To address the second concern, protected access to disaggregated confidential data should be provided to market participant reviewing representatives, rather than imposing an absolute bar on access by market participants to such data. Without such access, the due process rights of interested parties as well as the Commission's ability to develop a complete and balanced record will be severely compromised.

II. LONG TERM PROCUREMENT PLANNING SHOULD REFLECT AND INCORPORATE ESTABLISHED CHP POLICY AND GOALS

The Commission's CHP Policy and other policy directives are clear and established: retain the existing CHP capacity of approximately 4,596 MW and plan to acquire new, incremental CHP resources. This policy is established and should not be re-litigated in the LTPP; rather, it should be reflected in the LTPP.

² See 2009 IEPR, at 104.

³ See *Monthly Response to Administrative Law Judge's Request*, dated November 10, 2009, filed by Southern California Edison Company, May 17, 2010, in A.08-11-001 (stating that the global settlement negotiations are ongoing).

A. CHP Policy Is Established and Being Implemented

The Commission's CHP Policy is set in D. 07-09-040, which created the Commission's Prospective QF Program. Decision 07-09-040 governs the IOUs' procurement, in accordance with federal and state law, of power from CHP resources, both existing and new.⁴ That decision is being implemented, as are orders for the retention of existing CHP capacity and procurement from new CHP capacity.⁵

According to the OIR, the D.07-09-040 directives regarding the existing CHP capacity to be retained and that some level of incremental new CHP capacity is to be procured by the IOUs are not to be challenged in this docket.⁶ These and other CHP-specific matters will be addressed by the parties long-engaged in the implementation details, ideally pursuant to a negotiated "global settlement" (CHP Settlement). However, that possible solution will undoubtedly be in a separate docket. As is often the case, in terms of implementing the Commission's established policy, the devil has proven to be in the details. Regardless, these CHP-specific procurement directives are not to be re-litigated

⁴ See D.07-09-040, at 122 ("we do not want to see erosion of the utilities' QF supplies, therefore we expect that as old QF contracts expire, new or renewed QF contracts will replace them.")

⁵ See D.07-12-052, at 85 ("we require the IOUs to at least maintain their current QF capacity over the next decade. The IOUs current QF capacities are recorded as 2,166 MW for PG&E; 4,162 MW for SCE; and 270 MW for SDG&E and shall be preserved through re-contracting with existing QFs and contracting with new QFs."); see also Cogeneration And Small Power Production Annual Reports (January 2010) (enabling determination of existing CHP QF levels distinct from renewable QF levels) (available online at: <http://www.pge.com/b2b/energysupply/qualifyingfacilities/cogeneration/>; http://www.sce.com/NR/rdonlyres/E4ABE892-DCEB-4788-BA19-B1047B5088C2/0/1001_QFSemiAnnualReport.pdf; http://www2.sdge.com/srac/Jul_Dec_2009.htm).

⁶ OIR, at 18 (setting the scoping standard and deeming issues "already considered in other procurement-related dockets in Table 1" not within the scope of this proceeding).

here; rather, they are to be incorporated for LTPP purposes. The failure of a long term procurement plan to incorporate the retention of existing CHP and the procurement of new CHP by the IOUs would eviscerate established CHP policy. The Commission should guard carefully against such an inadvertent result.

Pursuant to the preliminary scope, this proceeding will consider “*scenarios to assess ... cost-effective resource strategies to achieve GHG goals.*”⁷

Incorporation of established precedent regarding the retention of capacity equal to current levels of CHP capacity, and the development of significant new CHP resources for the state, will need to be included within the scope. As one example, Administrative Law Judge (ALJ) Kolakowski’s Initial Ruling on Procurement Planning Standards attaches standardized load and resource tables;⁸ the “Bundled Customer Need” table in Attachment 3 has a line for “QF Contractual Resources” under the existing and planned resources category, with an input cell for every year starting in 2011 going out to 2020. This row will need to be completed; it should be completed with publicly available data that reflects established policy. Another example is the required “Need Level” sensitivity analysis.⁹ This Need Level sensitivity analysis should use, as a placeholder, a range of incremental, new CHP capacity informed by CARB’s Scoping Plan and the CEC’s 2009 IEPR.

⁷ OIR, at 12.

⁸ See, ALJ Initial Ruling, issued May 28, 2010, Attachment 3; EPUC notes that in R.08-02-007, it was suggested and staff agreed that the QF procurement should be broken out between renewable QFs and CHP QFs.

⁹ See ALJ Initial Ruling, Attachment 2, at 11, Table 4.

B. Existing CHP Capacity Data and Reasonable Data on New CHP Potential That Reflect Commission and CARB Policy and Are Publicly Available Should Be Used

Existing CHP capacity data are available. Use of existing CHP levels, approved by the Commission in D.07-09-040 and D.07-12-052, as modified, should be used in the LTPP as an unchanging, required base case assumption.¹⁰ Updated, final new CHP data, e.g., for planned incremental resources pursuant to final implementation of the Commission's CHP policy, however, is not currently available. This data will remain unavailable until a CHP settlement is finalized or a new CHP rulemaking is opened. In the meantime, parties and Commission staff will need to use "placeholder" data for the Need Level sensitivity analysis; i.e., for an "optimistic" level of incremental CHP and a "conservative" level of incremental CHP. Publicly-vetted assessments for new, incremental CHP capacity to 2020 are available and should be used, specifically, the CARB's Scoping Plan and the CEC's 2009 IEPR.

CARB's implementation of AB 32 relies on a foundation of existing CHP resources and the GHG benefits they provide being retained. It also looks to incremental CHP resources as a basis to secure additional GHG benefits, while retaining industrial and commercial operations in the state. Assembly Bill 32 requires reduction of greenhouse gas emissions, and CARB's Scoping Plan lists Energy Efficiency, Renewables and CHP as tools to be used to achieve

¹⁰ See Cogeneration And Small Power Production Annual Reports (available online at: <http://www.pge.com/b2b/energysupply/qualifyingfacilities/cogeneration/>; http://www.sce.com/NR/rdonlyres/E4ABE892-DCEB-4788-BA19-B1047B5088C2/0/1001_QFSemiAnnualReport.pdf; http://www2.sdge.com/srac/Jul_Dec_2009.htm).

emissions reductions. The CARB CHP strategy thus includes (1) retention of existing CHP, including reconfigured and repowered facilities, to secure existing GHG savings¹¹ and (2) new CHP resources that are needed to provide an additional 6.7 MMTeCO₂.¹²

CARB referred to approximately 4,000 MW of new CHP for purposes of achieving the GHG emissions reduction target; a lower estimate of new CHP potential developed for the CEC, however, concludes that 2,240 MW of new CHP could be achieved by 2020.¹³ These figures serve as reasonable placeholder bookends, pending finalization of the implementation of the Commission's adopted CHP policy.

The following CHP data (in MW) should be used:

¹¹ As indicated in staff's response (#53) in R.08-02-007,

CARB is responsible for implementing AB 32, and the Commission's CHP programs contribute towards AB32 emissions reductions measures identified by CARB. All portfolios analyzed in the LTPP should be compliant with AB 32.

According to the IOUs' January 2010 Cogeneration And Small Power Production Annual Reports, the existing CHP capacity is 4,596 MW; the CHP resources now serving utility load will remain needed to serve load.

¹² Of the incremental 6.7 MMTeCO₂ to be achieved with new CHP resources, the IOUs' "share" is estimated to be approximately 4.3 MMTeCO₂ to 4.7 MMTeCO₂.

¹³ Notably, a project, once under contract, typically takes at least two years to permit and construct. Accordingly, if CARB's target date for the addition of new CHP capacity is January 1, 2020, the years 2018 and 2019 cannot be considered as part of the planning to meet the 2020 objective. Therefore to show orderly progress in reaching this goal with resources under contract and capable of meeting the full target by 2020, the capacity must be acquired by December 31, 2017. To meet this planning objective, the total 2,000 MW are divided into the five years beginning no later than 2013 and ending in 2017.

CHP Base Case Assumption with High Need Sensitivity											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total CHP
Existing CHP for Base Case Assumption	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596
Annual Incremental CHP for "High Need" sensitivity	0	0	448	448	448	448	448	0	0	0	2,240
Total CHP (by year)	4,596	4,596	5,044	5,492	5,940	6,388	6,836	6,836	6,836	6,836	6,836

CHP Base Case Assumption with Low Need Sensitivity											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total CHP
Existing CHP for Base Case Assumption	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596	4,596
Annual Incremental CHP for "Low Need" sensitivity	0	0	800	800	800	800	800	0	0	0	4,000
Total CHP (by year)	4,596	4,596	5,396	6,196	6,996	7,796	8,596	8,596	8,596	8,596	8,596

The OIR anticipates that settled issues, such as the staff's prior conclusion on the inclusion of procurement from CHP, will not be relitigated here.¹⁴ EPUC shares that hope and accordingly recommends the use of the data provided

¹⁴ OIR, at 8-9 ("Though the Commission will not issue a final ruling in R.08-02-007, we do not wish to duplicate work or backtrack and revisit matters that have already been resolved in R.08-02-007. Therefore, the record of R.08-02-007 will be incorporated into this proceeding. It is expected that all matters resolved in good faith through ACRs, Administrative Law Judge (ALJ) Ruling, as well as those resolved in good faith amongst parties in R.08-02-007 remain in effect and will not be revisited in the current proceeding unless the Commission determines otherwise.")

above; the range of incremental 4,000 MW to 2,240 MW of CHP is offered as a reasonable placeholder pending final implementation of the Commission's CHP policy. There should be no dispute regarding the existing levels of CHP to be retained pursuant to Commission decisions.

III. THE COMMISSION'S CURRENT CONFIDENTIALITY POLICY, WHILE PROBLEMATIC, OSTENSIBLY PROVIDES MARKET PARTICIPANTS WITH INDIRECT ACCESS TO CONFIDENTIAL DATA THROUGH REVIEWING REPRESENTATIVES

The Commission's confidentiality policy has been challenged by EPUC and others and is currently subject to rehearing. That challenge and rehearing notwithstanding, the current policy does not include an absolute bar on access to confidential data by market participants.¹⁵ Thus, the Initial Ruling's limitation of access to confidential data to non-market participants must be revised to reflect the current Commission policy.

Specifically, D.07-05-032 struck the language in D.06-06-066 that imposed an absolute bar on access to confidential data by market participants.¹⁶ Decision 06-06-066, as modified by D.07-05-032, deferred to a later decision the issue of market participants' access to confidential data. That later decision, D.06-12-030, orders that market participants may have indirect access to confidential data through qualified reviewing representatives.¹⁷

¹⁵ There is, however, a de facto bar on access due to the simultaneously vague and draconian restrictions on Market Participant's Reviewing Representatives; these restrictions are undergoing rehearing and EPUC will not re-argue the issues associated with them here.

¹⁶ D.07-05-032, at 10-11 (striking *in toto* the paragraph that included the following conclusion from D.06-06-066: "*Data that are confidential may be kept from market participants altogether.*").

¹⁷ D.06-12-030, Ordering Paragraph 5, at 52-53.

Footnote in Attachment 2 to the Administrative Law Judge’s Initial Ruling, however, states, “*Access to disaggregated market data may be restricted to non-market participants who sign a non-disclosure agreement, pursuant to D.06-06-066 and its successors.*” This restriction on access to non-market participants only must be changed. The Commission must ensure that all parties will have their due process rights protected and that this LTPP will be open to critically necessary input from all interested parties.

IV. CONCLUSION

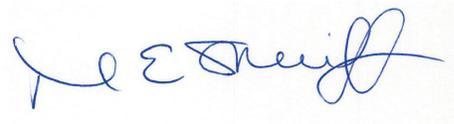
The Commission should incorporate the following publicly-available CHP data in this LTPP:

- ✓ 4,323 MW of existing CHP capacity must be retained by the IOUs as a required, unchanging base case assumption, per D.07-09-040 and D.07-12-052, as modified by D.08-09-045; and
- ✓ 2,240 MW to 4,000 MW of incremental CHP capacity must be procured by the IOUs as a placeholder for the “High-Need” and “Low-Need” sensitivity analysis.

The first value should be set for the retention of existing CHP, and the second range should serve as a placeholder for the incremental CHP MW to be procured, with the understanding that the placeholder range for incremental CHP will be informed by either the CHP Settlement or a subsequent CHP docket.

The Commission's current policy on confidentiality, specifically that market participant reviewing representatives are to have access to confidential data, must also be honored in this docket.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl" and "Nora Sheriff" joined together.

Evelyn Kahl
Nora Sheriff

Counsel to the
Energy Producers and Users Coalition

June 4, 2010

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **Comments of the Energy Producers & Users Coalition on Preliminary Scoping Matters** in R.10-05-006 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated June 4, 2010, at San Francisco, California.

A handwritten signature in black ink that reads "Karen Terranova". The signature is written in a cursive style with a long horizontal flourish at the end.

Karen Terranova

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