

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Integrate and Refine  
Procurement Policies and Consider Long-Term  
Procurement Plans.

Rulemaking 10-05-006  
(Filed May 6, 2010)

**PACIFIC ENVIRONMENT'S PREHEARING CONFERENCE STATEMENT**

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Pacific Environment respectfully submits this statement in response to the February 10 Administrative Law Judge's Ruling Modifying System Track I Schedule and Setting a Prehearing Conference ("February 10 Ruling"). This statement is timely and served pursuant to the February 10 Ruling and the Commission's Rules of Practice and Procedure.

**DISCUSSION**

The February 10 Ruling sets a prehearing conference for February 28, 2011, at which parties can discuss access to computer models and recommend Track III issues for consideration during Track I.<sup>1</sup> Pacific Environment recommends that refinements to bid evaluation in competitive solicitations, which the Commission has acknowledged "may benefit from the developments of Track I"<sup>2</sup> should be considered concurrently with Track I to ensure that the statutory requirements for procurement are met, the Commission's concerns regarding over-procurement are addressed, and the ratepayers are protected from unfair, unjust, and unreasonable procurement.

Moreover, with regards to the California Independent System Operator (CAISO) model, it is still unclear how the model considers various types of resources such as

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<sup>1</sup> February 10 Ruling at pp. 1-2.

<sup>2</sup> *Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and Ruling* at p. 44, R.10-05-006 (December 3, 2010) (hereinafter "Scoping Memo").

planned energy storage projects and ancillary import services, raising computer model transparency concerns.

**A. Refining the Bid Application Process Should Be Considered Concurrently With Track I.**

Satisfying the statutory requirements for procurement plans and bid solicitations and evaluations will directly affect the utilities' procurement and renewables obligations under Track I. In particular, these requirements provide procedural protections to ensure that the transactions in which the utilities engage are fair, reasonable, and just, and that over-procurement is avoided. Moreover, Public Utilities Code § 454.5 envisions including this Track III issue in these proceedings.

For example, Public Utilities Code § 454.5 requires that a utility's procurement plan include "[a] competitive procurement process under which the electrical corporation may request bids for procurement-related services," but that it "[e]liminate the need for after-the-fact reasonableness reviews of [a utility's] actions . . . including resulting electricity procurement contracts, practices, and related expenses."<sup>3</sup> Utilities are also required to "first meet [their] unmet resource needs through all available [cost effective, reliable, and feasible] energy efficiency and demand reduction resources," and "serve its customers at just and reasonable rates."<sup>4</sup>

However, as the Commission has noted, the utilities have not always abided by these requirements.<sup>5</sup> Refining the bid application and evaluation process concurrently with Track I will help ensure that the utilities fulfill their statutory obligations and engage

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<sup>3</sup> Cal. Pub. Res. Code § 454.5(b)(5), (c)(1), (d)(2) (2011).

<sup>4</sup> *Id.* at (b)(9)(C), (d)(1).

<sup>5</sup> Opinion Adopting PG&E's, SCE's, and SDG&E's Long Term Procurement Plans, p. 6, D.07-12-052 (December 21, 2007).

in transactions that result in just and reasonable rates without over-procuring fossil-fuel resources.

In addition, refining the bid application process should be considered concurrently with Track I because the Commission has expressed concern in the past regarding bid solicitations and over-procurement. For instance, in D.10-07-042, the Commission expressed concern that PG&E's Power Purchase Agreements exceeded the new capacity authorized in D.07-12-052 (the 2006 LTPP decision) by 231 MW.<sup>6</sup> This unauthorized over-procurement was viewed as unjust and unreasonable by the Commission,<sup>7</sup> and may have been prevented if better procedural protections were in place.<sup>8</sup>

Another concern with PG&E's Power Purchase Agreements comes from PG&E's attempt to hedge the risk of project delay and failure by over-procuring resources.<sup>9</sup> As the Commission found in D.10-07-042, PG&E's hedging strategy was unjust and unreasonable because PG&E could have mitigated the risk of project delay or failure by deferring the retirement of existing plants.<sup>10</sup> With better procedural protections in place, PG&E's over-procurement could have been stopped before proposed contracts reached the Commission. Refining bid solicitation with Track I issues will help ensure that concerns like these do not arise again and that utilities only procure what is necessary.

For bid evaluation criteria to be fair, just and reasonable, procedural protections must be in place and honored before procurement bids are solicited. Procedural protections can help prevent over-procurement, which imposes unreasonable costs on the

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<sup>6</sup> *Decision Approving One Power Purchase Agreement and Conditionally Approving Two Other Power Purchase Agreements*, D.10-07-042 at p. 40 (August 4, 2010).

<sup>7</sup> *Id.*

<sup>8</sup> Over-procurement is still a significant concern in these proceedings as evidenced by the scenarios released by the Commission showing PG&E's over-procurement in 2020 ranging from approximately 50 to 90%. *See* February 10 Ruling, Attachment 1, Load and Resource Tables, at p.17.

<sup>9</sup> D.10-07-042 at p. 42.

<sup>10</sup> *Id.*

ratepayers and undermines the policy of procuring preferred resources like renewables. Procedural protections can also assure that Commission decisions are adhered to during the solicitation process. For all these reasons, Pacific Environment recommends that the Commission consider refinements to the bid application process concurrently with Track I.

**B. The Commission Should Address Transparency Concerns With CAISO's Computer Model.**

The Commission has repeatedly emphasized that Public Utilities Code § 1822 and PUC Rules 10.3 and 10.4 require that the computer models used and testimony based on those models be made available to the public, as well as the equations and assumptions that are built into the model.<sup>11</sup> Compliance with these rules is necessary to ensure a transparent procurement process. However, it remains unclear to what extent, if any, CAISO is including crucial pieces of information relating to the quantification of capacity needs in its model.

For example, in response to Pacific Environment's request that CAISO ensure enough information is produced by its modeling to allow a complete evaluation of the energy storage system, demand response, and ancillary import resource options, CAISO claimed it was currently focused on the quantification, not the characteristics, of capacity needs.<sup>12</sup> Despite the fact that these resource options specifically relate to the quantification because they reduce energy demand, CAISO's ambiguous response as to what its model will include raises serious concerns whether CAISO's model can be relied upon for determining resource needs. Complete information on inputs and the assumptions used to determine them is necessary to evaluate the results of the model.

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<sup>11</sup> See Scoping Memo at p. 35; February 10 Ruling at pp. 5-6.

<sup>12</sup> Post November 30 Workshop Reply Comments of CAISO in R.10-05-006 at p. 9 (filed Jan. 26, 2011).

## CONCLUSION

Pacific Environment requests that the Commission consider refinements to the bidding process concurrently with Track I, and assure that enough information is available to meaningfully evaluate CAISO's model.

Respectfully submitted,

February 23, 2011

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**CERTIFICATE OF SERVICE**

I, Deborah Behles, am over the age of 18 years and employed in the City and County of San Francisco. My business address is 536 Mission Street, San Francisco, California 94105.

On February 23, 2011, I served the within document **PACIFIC ENVIRONMENT'S PREHEARING CONFERENCE STATEMENT** in R.10-05-006, pursuant to the Administrative Law Judge's Ruling Modifying System Track I Schedule and Setting Prehearing Conference, with separate and additional delivery of hard-copies by U.S. Mail to Assigned Commissioner Peevey and Assigned ALJ Allen at San Francisco, California.

Executed on February 23, 2011, at San Francisco, California.

/s/ Deborah Behles \_\_\_\_\_

Deborah Behles

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