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Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 12-03-014 (Filed March 22, 2012)

THE DIVISION OF RATEPAYER ADVOCATES' OPENING COMMENTS IN RESPONSE TO THE ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON WORKSHOP TOPICS

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I. INTRODUCTION

Pursuant to the May 17, 2012 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo) and Administrative Law Judge (ALJ) David Gamson's October 4, 2012 email revising dates for opening comments on Track III of the long-term procurement planning (LTPP) proceeding, Rulemaking (R.)12-03-014, the Division of Ratepayer Advocates (DRA) submits the following opening comments on procurement rules.

The May 17, 2012 Scoping Memo lists 15 issues related to procurement rules and requests that parties comment on changes to current procurement rules and what new procurement rules should be adopted. DRA submits the following comments addressing Issue 3 related to Greenhouse Gas (GHG) compliance instruments and cost-effective GHG emissions reductions, and Issue 11 on refinements to the independent evaluator (IE) process. DRA also recommends that the Commission develop procurement rules that reflect better integration between Renewables Portfolio Standard (RPS) procurement and the LTPP.

II. SUMMARY OF RECOMMENDATIONS

DRA makes the following recommendations pertaining to the issues set forth in the May 17, 2012 Scoping Memo, along with one additional recommendation related to better integration of the LTPP and RPS procurement.

- **Greenhouse Gas (GHG) Emissions Reduction Issues**

  When making determinations on the impact of long-term procurement decisions on GHG emissions reductions, the Commission should:

  a) Ensure that the investor-owned utilities (IOUs) reduce their need to procure GHG compliance instruments by pursuing cost-effective GHG emissions reductions on a portfolio-wide basis by developing a Marginal Abatement Curve (MAC) for all available GHG reductions; and

  b) Require the IOUS to track the progress of their current AB 32-related programs and procurement decisions towards achieving California's GHG emissions reduction mandates.

- **Refinements to the Independent Evaluator (IE) Process**

  i. Energy Division (ED), rather than the investor-owned utilities (IOUs) should select the Independent Evaluators (IEs) that will

execute contracts with the IOUs and determine the IE's project assignments.

ii. The Commission should adopt the IE oversight language proposed by ED in Appendix B of the June 13, 2011 ruling in R.10-05-006, except that the Commission should delete the term "particular egregious" to qualify conflicts of interest. DRA proposes allowing for exceptions to disqualification being allowed when supported by a majority of the PRG members.

- **Better integration of Renewables Portfolio Standard (RPS) procurement and LTPP**

  i. Commission staff should initiate a process immediately following a decision on Track II issues to determine how to best integrate the RPS and LTPP proceedings.

  ii. The Commission should begin a process of requiring the IOUs to utilize the data, procurement strategies and least-cost best-fit methodologies set forth in their annual RPS procurement plans in the LTPP.

  iii. Information from the RPS proceeding and LTPP proceedings should inform decisions in each proceeding.

III. DISCUSSION

DRA appreciates this opportunity to submit proposals on changes to procurement rules, including the opportunity to provide reply comments on November 30, 2012, consistent with ALJ Gamson's November 1, 2012 email. Depending on the scope of opening comments and proposed changes to the rules, it may useful to have a workshop in which parties can present their proposed changes to procurement rules and respond to comments and questions from other parties. This would allow parties to learn more about the proposals of other parties and provide the basis for better informed reply comments. If such a workshop appeared necessary or useful, and could be scheduled for the week of November 12, then it would not be necessary to change the date for reply comments. If it were necessary to schedule a workshop later than the week of November 12, it might be necessary to revise the schedule for reply comments.

A. GHG Emissions Reduction Issues

DRA proposes two general policy recommendations that the California Public Utilities Commission (Commission) should consider, on an ongoing basis, when making determinations on the impact of long-term procurement decisions on GHG emissions reductions. The May 17, 2012 Scoping Memo lists as Issue 3:

> "[e]nsuring utilities reduce their need to procure GHG compliance instruments by pursuing cost-effective GHG emissions reductions on a portfolio-wide basis."

The 2010 Long Term Procurement Plan (LTPP) proceeding, R.10-05-006, considered GHG product procurement policies that authorize the IOUs to procure GHG products in order to comply with the California Air Resources Board's (ARB's) cap-and-trade program.[1] The Commission's review of GHG procurement policies in R.10-05-006 did not consider the ability of an IOU to make its own internal GHG emissions reductions in order to lower its need to procure GHG compliance instruments. In other words, the IOUs currently have the authority to procure GHG products that are needed to comply with ARB's cap-and-trade program; however, there is no requirement to ensure that IOUs are internally pursuing all portfolio-wide cost-effective emissions reductions as a component of their compliance with cap-and-trade requirements.

The Commission should require that the IOUs consider and pursue all cost-effective GHG reduction options across their portfolios when making long-term procurement decisions. DRA proposes that, as part of the long-term procurement planning process, each IOU develop a marginal abatement cost (MAC) curve[2] for all available GHG reductions in its portfolio. The MAC curves would represent the IOU's best estimates of the GHG emissions reductions available across its portfolios and the average cost of achieving those GHG reductions from a given measure. For instance, energy efficiency measures provide GHG reductions at a significantly lower cost than the development of renewable resources, and both would be captured in the MAC curve to show the amount of GHG emissions reductions the measure could achieve and the average cost of achieving those GHG emissions reductions. DRA recommends that all available GHG reduction measures are included in the MAC curve, including measures that are currently mandated by law (e.g. Renewables Portfolio Standard, Energy Efficiency programs, California Solar Initiative), and other measures that are outside of current mandates.

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[1] D.12-04-046, pp. 40-59.

[2] For an example of a marginal abatement cost curve for GHG emissions reductions see the following report: "Reducing U.S. Greenhouse Gas Emissions: *How Much at What Cost?*" McKinsey & Company, December 2007, p. 20. Available at: http://www.mckinsey.com/client_service/sustainability/latest_thinking/reducing_us_greenhouse_gas_emissions

Furthermore, the IOUs should attempt to capture the costs of achieving GHG reductions with the most granularity possible. For instance, the IOUs should estimate the average costs of achieving GHG reductions for each category related to energy efficiency programs (e.g. lighting programs, heating, ventilation and air conditioning programs, commercial programs, and residential programs) and each renewable resource (e.g. wind, solar photovoltaic, and solar thermal).

The MAC curve can provide useful policy guidance and provide ratepayers with assurance that the IOUs are looking at options to reduce GHG emissions across their portfolio as part of their strategy to comply with the market-based cap-and-trade program. First, a MAC curve will provide an outline of the measures that the IOUs should focus on most closely when developing strategies to comply with cap-and-trade. Given a current and projected forward price for GHG compliance instruments under cap-and-trade, the IOUs can use the MAC curve to estimate what measures are most likely to be cost-effective compared to procuring compliance instruments. While the targets for energy efficiency and renewable resources are set in their respective proceedings, it would be useful for procurement planning to understand the options a utility has for reducing its GHG emissions internally. For example, any energy efficiency measures that are not accounted for in the scenario planning that ultimately determines system need could be examined as to whether it is a cost-effective option to reduce an IOU's GHG compliance obligation under cap-and-trade.

Second, a MAC curve will be based on the best available data at the time, and will represent a current estimate of the emissions reductions and cost-effectiveness of each measure examined to reduce GHG emissions. An IOU's MAC curve could change over time with updated information, data, and assumptions, and ratepayers should be assured that the IOUs are periodically updating their MAC curves in each LTPP cycle, examining all GHG reduction measures available across their portfolio, and pursuing all cost-effective measures given the current and future prices of GHG compliance instruments so that they comply with cap-and-trade at the least overall cost.

Related to the need to pursue cost-effective GHG emissions on a portfolio-wide basis is the need to monitor the progress of current AB 32-related IOU programs and procurement decisions towards achieving California's GHG emissions reduction mandates. The Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32) directs the California Air Resources Board (ARB) to adopt a cap on GHG emissions at the 1990 level by 2020, and to develop a

Scoping Plan for how California can reduce its statewide GHG emissions to that level.[3] The Commission has consistently indicated that reducing GHG emissions in the electricity sector is a key policy objective,[4] and in 2008, the Commission, in collaboration with the California Energy Commission, developed and provided recommendations to ARB on measures and strategies for reducing GHG emissions in the electricity sector.[5] The recommendations agreed with the ARB's Scoping Plan that aggressive energy efficiency programs, obtaining at least 33% of California's electricity from renewable sources, and increased reliance on combined heat and power facilities are the principal measures for reducing GHG emissions in the electricity sector, in addition to a multi-sector market-based cap-and-trade program.[6] ARB has provided forecasts of what each measure should contribute to overall GHG emissions reductions. This includes an estimated 26.3 million metric tons of carbon dioxide equivalent (MMT CO_2e) of emissions reductions from energy efficiency measures including increased combined heat and power generation, 21.3 MMT CO_2e of emissions reductions from the 33% Renewables Portfolio Standard, and 2.1 MMT CO_2e from the California Solar Initiative.[7] The Commission has also estimated the GHG reductions from these measures in various resource policy scenarios.[8] It is essential that policy makers involved in long-term resource planning in California be informed about the progress of these utility programs towards achieving the GHG emissions reductions as envisioned by the State.

DRA recognizes that currently, an output of the scenario modeling in the LTPP is GHG emissions. While the output of GHG emissions from scenario modeling will be useful to inform long-term procurement planning, the proposed scenarios thus far do not isolate the GHG impacts of utility programs and procurement decisions, but instead have been developed to inform the other prioritized issues of nuclear policy and flexible resource need. As an important component of California's overall strategy to reduce GHG emissions, the IOUs should be held accountable for their progress in achieving GHG reductions, which will also inform policy makers if certain

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[3] Assembly Bill 32; Health and Safety Code §38561.

[4] D.07-12-052, pp. 2-7; D.08-10-037, pp. 2-3.

[5] D.08-10-037, p. 3.

[6] D.08-10-037, p. 6

[7] California Air Resources Board, Climate Change Scoping Plan, December 2008, p. 17.

[8] D.08-10-037, pp. 37-39.

programs are not achieving the expected GHG reduction benefits, or if certain procurement decisions will impede on AB 32 goals.

DRA proposes that as part of the IOU's long-term procurement planning, the IOUs should be required to show the progress of AB 32-related utility programs in achieving GHG reductions. For instance, are these programs achieving, or on a trajectory to achieve, the GHG emissions reductions as envisioned by CARB in its AB 32 Scoping Plan? This tracking requirement will serve as a useful guide to understanding which programs have been most cost-effective at reducing GHG emissions in the electricity sector, and can inform policy makers as they look beyond the 2020 GHG emissions mandate and consider how California will reach its 2050 GHG emissions target.

Furthermore, ratepayers need assurance that the IOUs are explicitly considering greenhouse gas (GHG) emissions in each procurement application for fossil generation. The Commission should require the IOUs to demonstrate the long-term GHG impacts for all new fossil fuel resources and show that the additional fossil fuel resources will not impede AB 32 goals by crowding out other low-carbon resources. The Commission has agreed that the utilities should "demonstrate how each application for fossil generation comports with these [GHG reductions] goals,"[9] however the current requirement appears to be insufficient at demonstrating how the long-term procurement decisions for fossil resources are in line with California's GHG reduction goals.

B. Refinements to the Independent Evaluator Process.

1. The Commission should resolve conflicts of interest in the current Independent Evaluator Process by requiring Energy Division staff to select and assign Independent Evaluators.

The Commission should resolve inherent conflicts of interest in the current Independent Evaluator (IE) process, by making the Commission's Energy Division rather than the IOU responsible for selecting IEs and then assigning projects after they are selected. The current policy granting IOUs the authority to contract with and manage the IEs conflicts with the intent of the IE process to create an independent review of the procurement practices of the IOUs. The purpose of an IE is to "ensure a fair, competitive procurement process free of real or perceived

[9] D.07-12-052, pp. 3-4.

conflicts of interest."[10] Currently, the IOUs request bids for potential IEs. A shortlist is presented to the procurement review groups (PRGs), which includes the Commission's Energy Division as well as DRA and other non-market participants. The IOUs conduct interviews with the shortlisted candidates with the PRG members allowed to participate. The IOU then selects the IEs that will become part of its IE pool. When procurement projects arise, the IOU selects an IE from its pool to perform the work. An inherent conflict of interest is created by this process when an IE must first satisfy the IOU in order to be selected as a member of the IE pool, and then continue to meet the IOU's expectations to receive assignments from the pool of IEs. Furthermore, if an IE wishes to renew its IE contract, as often happens, it must continue to satisfy the expectations of the IOU. This creates conflicts of interest that can influence the independence of the IE reports.

DRA proposes an alternative that will significantly reduce concerns over conflicts of interest, while requiring only minor changes to the current procedure. Instead of the IOUs making the final selection of IEs, ED should be empowered to make the final selection. The IOUs can continue to request bids and create a shortlist for the PRG. The shortlisting process should be fully transparent to the PRGs. ED should be allowed to add or delete IE candidates to the shortlist. IE interviews can be conducted with the IOU, ED and other interested PRG members. ED will decide which IE(s) will be invited into the IOU pool, after which the IOU will continue with necessary contractual arrangements. As projects requiring the assignment of IEs from the pool arise, ED with input from the IOU should make the final selection of a specific IE.

The IE conflict of interest issue has been examined in previous Commission decisions. D.07-12-052 stated that it was "not practical to transfer the IE contracting authority to the Commission, however, we will continue to explore ways to do so in the future."[11] Interim steps were taken to help ensure independence of the IEs.[12] The subsequent LTPP proceeding (R.10-05-006), once again examined the conflict of interest issue, and once again reserved its

[10] D.07-12-052, p. 140.

[11] D.07-12-052, p. 136

[12] D.07-12-052, pp. 137-139

resolution for a future proceeding. D.12-04-046 states "we agree that it would be preferable for IEs to be hired and report to the Commission, rather than the utilities, …we will consider this proposal again."[13]

In the two previous LTPP proceedings, the IOUs presented reasonable concerns about moving all IE contracting and contract management to ED. These concerns included administrative issues, such as state contracting rules and IE invoice accounting. In addition, DRA notes that moving all contractual obligations to the Commission, as previously contemplated, would require additional staffing and administrative changes.

DRA's current proposal is a much simpler solution to remove potential conflicts of interest without significantly altering the current process or greatly adding to the Commission's work load. This proceeding is the third LTPP proceeding to examine this important issue and should not be the third one that fails to resolve the conflict of interest inherent in having IOUs select IEs. The Commission should adopt DRA's proposal to revise the IE process as noted above, and resolve remaining implementation details in the current LTPP proceeding.

2. The Commission should adopt all but one oversight rule for IEs that Energy Division proposed in R.10-05-006.

The Commission should also adopt all but one of the Energy Division's proposed oversight rules for IEs, which were offered for consideration in the prior LTPP rulemaking. The *Administrative Law Judge's Ruling Addressing Motion for Reconsideration, Motion Regarding Track I Schedule, and Rules Track III Issues*, issued June 13, 2011 in R.10-05-006 included Appendix B,[14] which proposed procurement oversight rules. D.12-04-046 adopted a proposal to keep public and confidential reports consistent. It rejected one proposal and remained silent on the majority of the proposed changes. Commenting on its failure to adopt the proposed changes, D.12-04-046 states that "we may consider additional changes in future proceedings."[15] In this subsequent LTPP proceeding, DRA recommends that the Commission adopt all but one of the Energy Division's recommended changes.

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[13] D.12-04-046, p. 67

[14] A copy of Appendix B is appended to DRA's comments.

[15] D.12-04-046, p. 67

D.12-04-046 rejected a proposed change to require that IE reports on solicitations of products five years in length or greater be filed at least seven days before any IOU application is filed with the Commission. In rejecting the proposed change, D.12-04-046 commented that seven days is not a long enough time span to be useful and that a longer time span of 20 to 30 days might cause delays. DRA disagrees with this conclusion. Adding seven days for interested parties to review IE reports would be very useful, especially considering the limited resources of many parties in procurement proceedings.

DRA supports full adoption, with the following exception, of the previously proposed IE oversight rules. In Section 1(b) of Appendix B, the third bullet states "An IE may be disqualified from participating in an RFO process if there are *particular egregious* (emphasis added) conflicts of interest that arise during the contract." The term "particular egregious" is unnecessary and allows for a wide range of interpretation. DRA recommends the words "particular egregious" be removed. To allow consideration of potential conflicts of interest that may arise during the contract, DRA proposes that a potential disqualification for conflict of interest should be considered at a PRG meeting where a quorum is present. If a majority of PRG members vote to allow the IE to continue under the specific circumstances that arise, then the IE would be allowed to continue.

C. Other procurement rules: RPS and LTPP

DRA recommends that the Commission better integrate information from the RPS proceeding, Rulemaking (R.)11-05-005, into the LTPP. Throughout the LTPP proceeding, DRA and other parties have observed that the Commission has relied on outdated or imperfect RPS information to feed into the LTPP.[16] This has the potential to undermine the renewable integration modeling effort underway by the California Independent System Operator (CAISO) to ascertain the amount—if any—of flexible resources that will be needed to integrate a 33% RPS and beyond. In order for the modeling exercise to be accurate and useful, the Commission should strive to use the most up to date RPS information available. Accurate RPS information is not only necessary for the transmission planning process but also for determining how the IOUs

[16] In opening comments on the Track II standard planning assumptions, some of the issues raised by parties included: using unrealistic retirement assumptions for renewables, not adequately accounting for incremental solar PV and not considering the Governor's 12,000 megawatts of distributed generation target.

are procuring preferred resources and how they have progressed in reducing their GHG emissions as discussed in more detail under Issue 3.

DRA recommends that the Commission initiate a process to account for the most accurate RPS information into the LTPP immediately following a decision on Track II issues and before the next LTPP cycle begins in 2014. Resolving the hurdles with integrating RPS with the LTPP will require adequate time as the Commission acknowledged in the September 20, 2012 Track II Assigned Commissioner's Ruling Setting Forth Standardized Planning Scenarios for Comment:

> "a tension emerges among several goals: transparency, the need for detailed planning information (i.e. transmission planning requires specific resources at specific locations), confidentiality, and the use of the most accurate and current information. Thus far, parties have not proposed any workable solution that meets all of these goals nor have they agreed to relax any confidentiality provisions."[17]

Due to this impasse, the Commission decided to revert to using the 33% RPS Calculator that was used in the 2010 LTPP. However, many parties raised concerns in their opening and reply comments on the standardized planning assumptions, stating that the scenarios selected for planning purposes only model an all-gas future and neglect to take into consideration both the costs associated with each portfolio as well as the most recent changes to RPS procurement, such as the Governor's call for 12,000 MWs of distributed generation (DG).[18] DRA agrees that more accurate RPS information should inform the LTPP; if not, a vital component of the planning exercise is missing. DRA offers the following recommendations for integrating the information from the RPS proceeding with LTPP.

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[17] *Assigned Commissioner's Ruling Setting Forth Standardized Planning Scenarios for Comment*, September 20, 2012, p. 11.

[18] Parties that raised these issues in their October 5 and/or October 19, 2012 comments include the CAISO, the Center for Energy Efficiency and Renewable Technology, the City and County of San Francisco, and the California Environmental Justice Alliance.

1. The Commission should begin a process of requiring the IOUs to utilize the data, procurement strategies and least-cost best-fit methodologies set forth in their annual RPS procurement plans in the LTPP.

In the 2006 LTPP, the Scoping Memo directed the IOUs to provide detailed information about their own individual renewable energy procurement strategies.[19] This included information about existing and planned renewable projects, compliance with RPS program targets, a discussion of integration costs and their strategy for achieving 33% RPS.[20] Prior to that, Finding of Fact 54 from the 2004 LTPP Decision (D.04-12-048) stated:

> 54. "…The IOUs must provide detailed annual analysis of renewable resource potential over the next 10 years in their 2006 LTPPs and must include transmission planning for renewable resources in their 2006 LTPPs. Transmission issues will be further addressed in I.00-11-001, in coordination with the RPS docket."

It would be beneficial to revert to this process of requiring the IOUs to include information from their most recent, approved RPS procurement plans into the LTPP. This would ensure that the same data and information is used for both LTPP and RPS planning without imposing additional work on the IOUs.

2. Information from the RPS proceeding and LTPP proceedings should inform decisions in each proceeding.

Requiring the IOUs to replicate the data and procurement strategies from their RPS procurement plans into the LTPP would lead to more integrated resource planning and likely maximize the inclusion of preferred resources in long-term planning. This would enable the IOUs to procure preferred resources that not only help them to achieve their RPS targets but also other needs such as local capacity requirements (LCR). For example, a LCR needs determination made in the LTPP could inform the IOUs' future RPS procurement planning by allowing the IOUs to target their annual RPS request for offer (RFO) solicitation to preferred resources that meet both LCR need and fulfill their RPS goals.

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[19] D.07-12-052, p. 64–65.

[20] D.07-12-052, p. 64–65.

IV. CONCLUSION

DRA respectfully requests that the Commission adopt the recommendations in these opening comments.

Respectfully submitted,

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