

**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.

Filed Public Utilities Commission
May 6, 2010 San Francisco, California
Rulemaking 10-05-006

**REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM
ON THE PROPOSED RULEBOOK**

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Pursuant to the directive provided by ALJ Kolakowski in her June 2, 2010, Ruling,¹ the Western Power Trading Forum (“WPTF”)² provides the following reply to comments on the Procurement Requirements Summary Document (“Rulebook”) filed on June 21, 2010. In its opening comments, WPTF generally agreed that the Rulebook could serve as a convenient compendium of Commission rules regarding procurement but strongly opposed the suggestion at the June 14 prehearing conference that the Rulebook is to “supersede” the related Commission decisions.³

I. The Opening Comments Demonstrate Broad Consensus that the Rulebook should Not “Supersede” Prior Commission Decisions.

In addition to WPTF, the Division of Ratepayer Advocates (“DRA”), Independent Energy Producers Association (“IEP”), Center for Energy Efficiency and Renewable

¹ See June 2, 2010, Administrative Law Judge’s Ruling on Procurement Requirements Summary Document (A.K.A. “Rulebook”) – Track III (“Ruling”).

² WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

³ June 21, 2010, *Comments of the Western Power Trading Forum on the Proposed Rulebook and Resource Planning Assumptions*, at p. 1.

Technologies (“CEERT”), Sierra Club, Pacific Environment, the Large-Scale Solar Association (“LSA”) and the Natural Resources Defense Council (“NRDC”) and the Union of Concerned Scientists (“UCS”) all agree that the Rulebook could be a helpful compendium, but should not have precedence over existing LTPP decisions. San Diego Gas & Electric Company (“SDG&E”) reserved its comments until such time as the Commission made clear its intent. Pacific Gas & Electric Company (“PG&E”) supports “developing the Rulebook as a reference manual, rather than as a General Order that would supersede Commission decisions.”⁴

Parties offered similar arguments in opposition to the concept that the Rulebook should have the status of a Commission decision or General Order. For example, NRDC/UCS stated, “we do not support the use of the Rulebook as a document that supersedes all rules not included or completely described therein because currently (i) it omits entire fields within procurement, like renewable portfolio standard rules, as the ALJ Rulebook Ruling notes, and (ii) by its nature, it summarizes rules and therefore does not encompass the full extent and context of those rule that are included, like the emissions performance standard rules.”⁵ DRA notes that, “past decisions were made in particular circumstances; superseding those decisions would separate the rules from the contexts in which those rules were made, which could make the rules and their purpose harder to understand, rather than easier.”⁶

IEP largely echoes DRA by stating that, “Any summary, however, cannot do full justice to the text of the decision that explains the basis and logic for the rule and provides the context in which the rule was developed.”⁷ IEP also draws an important analogy to existing legal treatises:

Useful analogies abound in the world of law. Many scholars have attempted to develop summaries of the case law on certain topics, and many of the resulting

⁴ PG&E Comments, at pp. 8-9.

⁵ NRDC/UCS Comments, at p. 8.

⁶ DRA Comments, at p. 9.

⁷ IEP Comments, at p. 4.

compendiums are very useful and highly regarded. But even the most revered compendiums—such as Witkin’s Summary of California Law—do not supersede or replace the opinions that are the basis for the summary. The opinions speak for themselves, and any attempt to condense or paraphrase their contents runs the risk of oversimplification or distortion.”⁸

The Sierra Club notes the time constraints that would be imposed on parties if the Rulebook is deemed to supersede prior Commission decisions: “The Rulebook should not be used as mechanism to change prior decisions related to procurement, and the language in the Rulebook should have no precedential value. If the Rulebook serves as anything more than a reference guide it would require an inordinate amount of resources to review it and to compare each rule in the Rulebook to the original decision.”⁹ LSA similarly points out that, “Developing a Rulebook with the degree of accuracy necessary for it to supersede and replace all of the thirty-three or more prior CPUC decisions addressing energy procurement would require an order of magnitude greater commitment of focus, time and resources from the proceeding participants and decision-makers. The effort to make the Rulebook into a legally-binding statement of procurement requirements could overwhelm this proceeding and threaten achievement of its other, much more important objectives.”¹⁰

In summary, these comments are reasonable, persuasive and represent a broad consensus among the overwhelming majority of participants to this proceeding. Only one party, Southern California Edison (“SCE”) argued to the contrary. WPTF responds to SCE’s proposals below.

⁸ Id.

⁹ Sierra Club Comments, at p. 1.

¹⁰ LSA Comments, at pp. 2-3.

II. The SCE Proposal regarding the Rulebook is Unsupported. It Does Not Need to Supersede Prior Commission Decisions to be “Useful.”

SCE states that it, “agrees with Staff that the Rulebook should supersede prior Commission decisions and becomes the one document that codifies all of the AB 57 procurement rules that govern the utilities’ procurement activities on behalf of their bundled customers.”¹¹ And further, “SCE continues support the principle [sic], however, that the rules governing the IOUs’ procurement activities are those contained in the Rulebook, and that those rules supersede any conflicting rules expressed in prior Commission decisions.”¹²

SCE offers little support for this position, other than to note that it has found its original proposed Rulebook that was not approved by the Commission in the 2006 LTPP to be an “extremely useful internal guide to procurement decisions and rules.”¹³ The conclusion that can be drawn from this, of course, is that the Rulebook can be “extremely useful” without having to supersede all of the prior Commission decisions that it summarizes. WPTF does not disagree that a concise Rulebook could potentially be “useful.” However, for the reasons stated in our opening comments and those of all the other parties cited in Section I above, we strongly oppose the SCE proposal for it to supersede prior Commission decisions.

III. The SCE Proposal regarding the Establishment of a Rulebook Working Group is Discriminatory and Undermines the Commission’s Decisionmaking Authority.

SCE suggests that, “the Commission establish a Procurement Rulebook Working Group comprised of designated representatives of the IOUs as well as representatives of the Energy Division and representatives from the IOUs’ Procurement Review Group. This Working Group

¹¹ SCE Comments, at p. 4.

¹² Id.

¹³ Id.

should be tasked with independently reviewing the *Draft Manual*, as well as addressing, and incorporating if necessary, suggested revisions offered by stakeholders.”¹⁴ WPTF finds this suggestion to be highly objectionable and recommends its rejection without further consideration. What this proposal means of course, is that there would be a troika of utilities, PRG members and Energy Division determining precisely how Commission authority will be usurped by a manual of their cloistered creation. Put in the baldest terms, parties that support competitive markets frequently find themselves on the opposite side from utilities and the non-market parties that comprise the PRG on procurement-related issues.

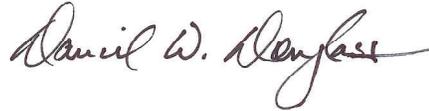
Therefore, the combination of having (a) the Rulebook supersede actual Commission decisions; and (b) the Procurement Rulebook Working Group comprised as proposed by SCE, would simply mean the potential disenfranchisement of parties such as WPTF that support competitive markets. Non-Working Group Parties will have to monitor all the activities of the Working Group, and initiate litigation whenever the Working Group adopts Rulebook language that they believe plays fast and loose with underlying Commission decisions. The time and resources that would be spent by market participants and the Commission in these litigation efforts will do nothing more than increase costs to consumers and create distractions from urgent policy work that needs full Commission and staff focus in the coming months and years.

Moreover, the proposal undermines the Commission’s own decisionmaking authority. Commission decisions are arrived at after lengthy participation from all interested parties. That participation can and often does entail workshops, written comments, testimony, hearings, briefs, comments on proposed decisions, etc. Whether a party achieves all of its goals or not, it is usually quite difficult to argue that the decisions were not reached without affording the due process of law to all concerned. By contrast, after all of these efforts had occurred, the SCE

¹⁴ SCE Comments, at p. 6.

proposal would allow a limited subset of parties to have the ability to interpret and restate the Commission's decisions according to their own biases and preferences. The proposal is seriously flawed, unfair and should be soundly rejected.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel W. Douglass". The signature is written in a cursive style with a large, looping 'D' at the beginning.

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June 28, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing ***Reply Comments of the Western Power Trading Forum on the Proposed Rulebook*** on all parties of record in ***R.10-05-006*** by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on June 28, 2010, at Woodland Hills, California.



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