

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 COMMENTS ON
CONVERGENCE BIDDING PROPOSALS – TRACK III**

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Pacific Environment respectfully submits these Comments in response to the July 1 Administrative Law Judge’s Ruling on Convergence Bidding – Track III, the July 16, 2010 ALJ Ruling on Motions for Party Status and Modification to Convergence Bidding Schedule, presentations at the July 26, 2010 Workshop on Convergence Bidding, the proposals presented by the Investor Owned Utilities (IOUs) at the August 23, 2010 Workshop on Convergence Bidding, and related materials.

I. INTRODUCTION

California’s IOUs are requesting this Commission’s approval for their participation in a new Convergence Bidding market. This new market, however, has not been tested in California yet nor has its potential impact on the market and renewables been evaluated. In the absence of a comprehensive evaluation, the IOUs rely largely on the “economic principles of market design espoused by the Federal Energy Regulatory Commission (“FERC”) and CAISO” as the mechanism that will reduce prices and provide reliability and efficiency benefits.¹ This mechanism is highly uncertain because

¹ See PG&E’s August 16, 2010 Proposal Regarding Participation in Convergence Bidding at pp. 2, 3-4.

CAISO's Market Redesign Technology Upgrade platform, which will govern Convergence Bidding, was launched in April 2009 and has not been thoroughly tested.²

Due to the uncertainties associated with Convergence Bidding, CAISO has plans to evaluate some issues related to convergence bidding, but not until after the market is operating: "CAISO has laid out an agenda for the next couple of years that includes: Evaluating the effect of the MRTU market design and planned enhancements, such as scarcity pricing and virtual bidding, on renewable integration."³ The lack of analysis before the market goes online is particularly worrisome when CAISO has asserted that it "cannot comment" on the impact of convergence bidders on variable renewable energy resource participation until CAISO convergence bidding is implemented in 2011.⁴

This is not the first time that California has been confronted with uncertainties when evaluating participation in a new market. California encountered a similar level of uncertainty when it deregulated its electricity market in the late 1990s. When California realized that deregulation had led to significant problems, the ratepayers and the public had already been harmed. To ensure that California does not repeat its past mistakes, Pacific Environment urges the Commission to enact safeguards that will help protect California's renewable energy goals and ratepayers. In particular, Pacific Environment urges the Commission to not authorize IOU participation in the CAISO convergence bidding market before the potential impact of Convergence Bidding on procurement has been thoroughly evaluated, and to require that the Convergence Bidding process is transparent and open.

² See, e.g., <http://tdworld.com/business/siemens-energy-market-management-20090601/> (discussing program).

³ Examination of operational or dispatch provisions of wholesale tariffs and market rules: Remarks of Udi Helman on behalf of CAISO on March 2, 2009, at the FERC Technical Conference: Integrating Renewable Resources into the Wholesale Electric Grid (AD-4-000), available at <http://www.ferc.gov/EventCalendar/Files/20090302091501-Helman,%20CAISO.pdf>.

⁴ RIMPR Discussion Paper at p. 15.

II. DISCUSSION

A. Regulatory Safeguards Are Necessary to Not Repeat the Mistakes of the Past.

History amply demonstrates why regulatory safeguards are necessary to protect against market failure. In the mid-1990's, in light of initial results from deregulation in Great Britain, California proposed a design for restructuring the market.⁵ The Convergence Bidding plan at issue here is similar in some respects to the deregulation plan. The deregulation plan created a new entity called the Power Exchange, which operated from April 1998 to January 2001, and CAISO.⁶ During its short operation, the Power Exchange, in conjunction with CAISO, conducted transactions through managing both a day-ahead and a real-time market.⁷ Some regulatory safeguards were enacted as part of the deregulation plan including a price cap on retail rates.⁸ Similarly, convergence bidding includes management and coordination of both a day-ahead and a real-time market, and the Commission is evaluating potential caps related to its operation.

California's deregulation plan, as this Commission is aware, created many significant problems in practice. California's deregulated market had a negative impact on renewable investment. As has been summarized in the literature, "[r]enewables already had taken a substantial blow from the onset of deregulation. Investors and operators saw little need to support such production based upon the expected price fall under deregulation that would make renewables uncompetitive."⁹ It also had a negative impact on communities already overburdened by pollution because California's decision

⁵ See R. Cudahy, *Electric Deregulation After California: Down But Not Out*, 54 *Admin. Law Rev.* 333, 340 (2002).

⁶ R. Michaels, *Venues and Markets: Regulating Competitive Electricity in the West*, 22 *Energy L. J.* 335 (2001); Cal. Assembly Bill 1890, 1995-96 Leg. Reg. Sess. (1996).

⁷ See Dept. of Energy Order, http://www.oe.energy.gov/DocumentsandMedia/EA-179_PX.pdf

⁸ Cal. Assembly Bill 1890, 1995-96 Leg. Reg. Sess. (1996).

⁹ A. Ramo, *California's Energy Crisis – The Perils of Crisis Management and a Challenge to Environmental Justice*, 7 *Alb. L. Envtl. Outlook* 1, 6 (2002).

in the wake of the crisis resulted in disproportionate siting of power plants and an erosion of public participation requirements.¹⁰ Further, restructuring the industry for deregulation hurt ratepayers. A National Association of State Public Interest Research Groups found that “[a] decade of electric industry restructuring has led to few benefits for the majority of consumers, and any benefits consumers have experienced are likely to be short-lived.”¹¹

Deregulation demonstrated that “light-handed regulation combined with the entrepreneurial profit-maximizing behavior of private participants in electricity markets does not serve the public well.”¹² Specifically, as one commentator articulated, “California’s failed ‘deregulation’ experiment arose largely from the failure of California to create properly functioning market rules, lack of diligence in market oversight, and the expectation that antitrust law would cure that which it was not designed to cure: market ills cultivated by regulatory rules that legitimized anticompetitive conduct and made that conduct the norm.”¹³ Put another way, markets “cannot be trusted to work without a high degree of government intervention”.¹⁴

To assure that the same types of mistakes are not repeated here, Pacific Environment recommends procedural protections and a comprehensive evaluation of the impacts of Convergence Bidding.

¹⁰ A. Ramo, *California’s Energy Crisis – The Perils of Crisis Management and a Challenge to Environmental Justice*, 7 Alb. L. Envtl. Outlook 1, 20-25 (2002).

¹¹ See *Toward A Consumer-Oriented Electric System: Assuring Affordability, Reliability, Accountability and Balance After a Decade of Restructuring* (2004), available at <http://www.frontiergroup.org/our-research/energy/reports-on-energy/toward-a-consumer-oriented-electric-system>.

¹² J. Weaver, *Can Energy Markets Be Trusted? The Effect of the Rise and Fall of Enron on Energy Markets*, *Houson Bus. & Tax L. J.* 131-140 (2004).

¹³ D. Bush & C. Mayne, *In (Reluctant) Defense of Enron: Why Bad Regulation Is To Blame for California’s Power Woes*, 83 *Or. L. Rev.* 207 (2004).

¹⁴ J. Weaver, *Can Energy Markets Be Trusted? The Effect of the Rise and Fall of Enron on Energy Markets*, *Houson Bus. & Tax L. J.* 131-140 (2004).

B. The Commission Should Require Studies on the Impact of Convergence Bidding on California's Energy Market.

The impact of convergence bidding on renewable and conventional resources and their procurement is unclear. This is especially true here because all three IOUs requested different standards for participation. Uniform standards, however, are necessary for evaluating and comparing the effects of individual Convergence Bidding strategies, comparing effects of similar Convergence Bidding strategies implemented by different IOUs, and evaluating the aggregate effect of Convergence Bidding on procurement.

Comprehensive studies should be performed before widespread convergence bidding by IOUs is allowed. The studies could be completed by the Energy Division with the cooperation of CAISO. These studies should be designed through a Commission led stakeholder process to assure that the necessary parameters are addressed.

These studies should address both the intended and the unintended consequences of individual Convergence Bidding strategies and the cumulative direct and indirect impacts of Convergence Bidding transactions on renewable and conventional markets as a whole. Specifically, the direct and indirect impacts of the various Convergence Bidding strategies on the Real-Time Market and the Day-Ahead Market prices for renewables and conventionals should be evaluated. A study should also examine how various Convergence Bidding strategies will directly and indirectly affect the amount of conventionals scheduled in the Day-Ahead Market and whether it will impact procurement and related economic issues for procurement of renewable and conventional resources.

California's market is different than other markets in the country, and the impacts on it need to be studied and evaluated. A comprehensive evaluation of the impacts of

convergence bidding on renewable and conventional resources is necessary to protect California's ratepayers and environment.

C. The Commission Should Require Transparency and Stakeholder Involvement.

Pacific Environment requests that the Commission require transparency and stakeholder involvement going forward. Pacific Environment initially urges the Commission to make all studies and reviews of the Convergence Bidding market available to the public, not just the Procurement Review Group (PRG). The PRG is a limited group designed to review procurement-related issues. Convergence Bidding has the potential to impact the market in several aspects, which are not limited to procurement.

Further, Pacific Environment requests that IOU data be made available to the public on at least a quarterly basis. If the IOUs designate information as confidential, the designations should be closely reviewed. The Commission has committed to scrutinizing "with rigor" all confidentiality claims and requires the utility to meet a strong burden of establishing that the redacted information is confidential.¹⁵

After evaluations or studies of the Convergence Bidding market are available, the Commission should reevaluate the limitations on IOUs involvement in the Convergence Bidding market through a public, stakeholder process. This will allow the Commission the opportunity to resolve problems with Convergence Bidding as soon as possible to minimize potential impacts to California's energy goals, the environment, and ratepayers.

III. CONCLUSION

Pacific Environment appreciates the opportunity to provide comments.

¹⁵ D.06-06-066, at pp. 2, 9.

Respectfully submitted,

August 30, 2010

/s/ Deborah Behles

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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 August 30, 2010, I served the within document **PACIFIC ENVIRONMENT'S COMMENTS ON CONVERGENCE BIDDING PROPOSALS – TRACK III** in R.10-05-006, pursuant to the Commission's Rules of Practice and Procedure, with separate and additional delivery of hard-copies by U.S. Mail to Assigned Commissioner Peevey and Assigned ALJ Kolakowski, at San Francisco, California.

Executed on August 30, 2010, at San Francisco, California.

/s/ Deborah Behles

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