

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 RESPONSE TO THE MOTION
OF THE INDEPENDENT ENERGY PRODUCERS**

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure, Pacific Environment respectfully submits this response to the January 26, 2011 Motion of the Independent Energy Producers Association for Reconsideration of the Schedule for this Proceeding ("IEP's Motion"). This response is timely and served pursuant to the Commission's Rules of Practice and Procedure.

DISCUSSION

IEP's Motion requests the reconsideration of the schedule for Tracks I and III of this proceeding. On January 28, 2010, Administrative Law Judge Allen sent the parties an email stating that the Track I schedule had been suspended. Due to this development, Pacific Environment will not respond to IEP's discussion of Track I.

With regards to Track III, Pacific Environment agrees with IEP that it is important to not delay consideration of the issues outlined in the Scoping Memo for this Track. These issues provide an important backdrop for resource negotiations and decisions, and consideration of these issues could impact decisions related to both bundled and system plans.

As the Scoping Memo set forth, issues related to the Procurement Review Group, the Independent Evaluator, and the bidding process will be handled in Track III, Phase 2.¹ In the 2006 LTPP, the Commission decided that the Procurement Review Group should be consulted for any transaction longer than three months.² The Commission further established a separate group to evaluate bundled transaction information and noted that the Procurement Review Group has a right to receive information related to bundled procurement processes.³ Thus, decisions made in Track III could impact both Tracks I and II.

In addition, it is important that the Commission examine the procedural protections in Track III before bundled transactions are negotiated, which necessitates consideration of Track III in the first quarter of 2011, as IEP suggests.⁴ California Public Utilities Code § 454.5 supports resolving issues related to the compliance with the Code requirements and reasonableness before any bundled transactions decisions are made by the Commission “in order to eliminate the need for after-the-fact reasonableness reviews” of approved procurement plans.⁵ In particular, the Code requires that an IOU’s plan “[e]nable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.”⁶ This is assessed by “upfront achievable standards and criteria.”⁷

The Code further specifies several criteria that need to be considered when entering transactions. For example, Section 454.5(b)(9)(C) requires utilities to meet all unmet demand through increased efficiency and demand reduction resources that are

¹ December 2010 Assigned Commissioner and Administrative Law Judge’s Joint Scoping Memo and Ruling in R.10-05-006, at pp. 45-46.

² D.07-12-052.

³ D.07-12-052 at 129.

⁴ IEP’s Motion, at p. 2.

⁵ Cal. Pub. Util. Code § 454.5(d)(2).

⁶ Cal. Pub. Util. Code § 454.5(d)(1).

⁷ Cal. Pub. Util. Code § 454.5(d)(2).

cost-effective, reliable and feasible.⁸ In the past, the Commission has acknowledged that the IOUs have not strictly followed these requirements.⁹ To assure that California's energy goals were met in the future, in the 2006 LTPP, the Commission decided that "[i]n subsequent iterations of the long-term procurement process, the IOUs will be expected in their resource planning to meet and exceed the high standards Californians expect as pacesetters on energy and environmental issues."¹⁰ The important protections put into place by the 2006 LTPP have not been reexamined for several years and should be reconsidered.

Importantly, subsequent proceedings have highlighted the need to reconsider the procedural protections from the last LTPP to ensure that the Commission's decision is followed in the negotiation process. For example, 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 by 231 MW.¹¹ This unauthorized over-procurement was viewed as unjust and unreasonable by the Commission,¹² and may have been prevented if better procedural protections were in place. Clarifying Track III issues before the IOU's negotiate contracts pursuant to authorization in Track II could help preclude unjust and unreasonable transactions.

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 (including the procurement of capacity increases in contract renewals in A.09-10-022).¹³ As the Commission expressed in D.10-07-042, PG&E's hedging strategy is unjust and

⁸ Cal. Pub. Util. Code § 454.5(b)(9)(C).

⁹ D.07-12-052 at p. 6.

¹⁰ *Id.*

¹¹ D.10-07-042 at p. 40.

¹² *Id.*

¹³ D.10-07-042 at p. 42.

unreasonable because PG&E could mitigate the risk of project delay or failure by deferring the retirement of existing plants.¹⁴ With better procedural protections in place, PG&E's over-procurement could have been stopped before proposed contracts reached the Commission. Handling Track III issues early in the process will ensure bundled plans utilize the framework the Commission decides is appropriate for negotiating transactions. Therefore, Track III decisions must be made prior to the negotiation of bundled contracts in order to protect the rate-payers and the environment as the Code requires.

CONCLUSION

Track III should be moved up as IEP suggests because the decisions made in Track III could impact decisions related to Tracks I and II. Track III should be moved up to ensure that other statutory requirements regarding procurement are met, prior concerns from the Commission are properly addressed, and the rate-payers are protected.

Respectfully submitted,

February 4, 2011

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¹⁴ *Id.*

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 4, 2011, I served the within document **PACIFIC ENVIRONMENT'S RESPONSE TO THE MOTION OF THE INDEPENDENT ENERGY PRODUCERS** 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 Allen at San Francisco, California.

Executed on February 4, 2011, at San Francisco, California.

/s/ Deborah Behles

Deborah Behles

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