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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION
FOR RECONSIDERATION AND MOTION REGARDING TRACK I
SCHEDULE AND ADDRESSING RULES TRACK III ISSUES**

Summary

The *Motion of Pacific Gas and Electric Company, Southern California Edison and San Diego Gas & Electric Company for Reconsideration of ALJ's Ruling* is denied. The *Motion of the Division of Ratepayer Advocates Regarding Track I (System Planning) Schedule and Request for Order Shortening Time to Respond* is granted in part and denied in part. The testimony previously due on July 26, 2011 is now due on August 4, 2011. Additional detail regarding the process for addressing certain Rules Track III issues is provided.

Utilities' Motion for Reconsideration

Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE) and San Diego Gas & Electric Company (SDG&E) request reconsideration of the Administrative Law Judge's Ruling Granting Motion to Modify System Track I Schedule, issued May 31, 2011 (May 31 Ruling). The May 31 Ruling granted a motion by the three utilities and the California Independent System

Operator (CAISO) that requested additional time to serve their prepared testimony in System Track I of this proceeding.

The three utilities argue in their motion that the May 31 Ruling, by eliminating the utilities' reply testimony, deprives the utilities of due process and is inconsistent with past Commission practice. (Motion for Reconsideration at 2.) These arguments lack merit.

The utilities argue that they need to have reply testimony in order to be able to respond to the testimony of other parties. (Id. at 3.) The schedule set in the May 31 Ruling provides for evidentiary hearings, at which the utilities will have the opportunity to cross-examine witnesses of other parties. The schedule set in the May 31 Ruling also provides the utilities the opportunity to file opening briefs and reply briefs, and the opportunity to file opening comments and reply comments on any proposed decision in this proceeding. Additionally, because the schedule set in the May 31 Ruling provides for evidentiary hearings, the utilities may have another opportunity to respond orally to the testimony of other parties if utility witnesses are cross-examined by other parties.

The utilities have failed to show why reply testimony is necessary, given the availability of evidentiary hearings, briefing, and comments. The utilities have ample opportunities to respond to the proposals of other parties.

The case cited by the utilities, in which the U.S. Supreme Court held that an evidentiary hearing was not required prior to termination of disability benefits, also stated:

The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." [Citation omitted.] All that is necessary is that the procedures be tailored, in light of the decision to be made, to "the capacities and circumstances of those who are to be heard," [citation omitted] to insure that

they are given a meaningful opportunity to present their case.
(*Mathews v. Eldridge*, (1976) 424 U.S. 319 at 348-349.)

Here, the utilities have been given and continue to have meaningful opportunities to present their case. The revised schedule set in the May 31 Ruling does not deprive the utilities of due process.

The utilities also argue that elimination of reply testimony is inconsistent with past Commission practice, and argue that Commission Rule of Practice and Procedure 13.4 should be applied by analogy. (Motion for Reconsideration at 3.) It is common in application proceedings and some rulemakings for the utilities to both “open and close,” but that is neither universal nor required. There are other proceedings where the Commission has not provided for reply testimony.

(See, e.g. D.03-06-071, at 3 (modified on other grounds in D.03-12-065).)

Commission practice does not require the utilities to have reply testimony, nor do the Commission’s Rules of Practice and Procedure.

Rule 13.4 reads:

In hearings on complaints, applications and petitions, the complainant, applicant, or petitioner shall open and close. In hearings on investigation proceedings where filed rates or rules which do not result in an increase have been suspended, the respondent shall open and close. In other investigation proceedings, the Commission's staff shall open and close. Intervenors shall follow the parties in whose behalf the intervention is made. The presiding officer, where circumstances warrant, may vary the order of presentation.

First, this is a rulemaking, not a complaint, application, petition or investigation, so Rule 13.4 does not apply. Even if it did apply, it clearly states that “The presiding officer, where circumstances warrant, may vary the order of presentation.” The May 31 Ruling is consistent with both Commission practice and Rule 13.4. Accordingly, the utilities’ motion for reconsideration is denied.

Nevertheless, it is possible that limited reply testimony could be appropriate. Accordingly, the first two days of evidentiary hearings are reserved for oral reply testimony. Any party seeking to offer oral reply testimony must show, prior to presenting such testimony, that the information it intends to present is not duplicative of its prior written testimony and that it could not be presented via briefing or cross examination.¹

**Division of Ratepayer Advocates'
Motion Regarding Schedule**

The Division of Ratepayer Advocates (DRA) requests an extension of time for submitting its testimony, arguing:

Three weeks is insufficient time for DRA and other parties to review the testimony of the IOUs and the CAISO, develop data requests, receive and review data responses, and develop, review, and finalize responsive testimony. It is unrealistic to expect meaningful testimony from non-IOU parties with such a shortened time to conduct discovery and prepare testimony. (DRA Motion at 3.)

In the alternative, DRA requests that the utilities serve at an earlier date (June 17, rather than the scheduled July 1) the portions of their testimony that are not dependent upon the yet-to-be-completed modeling runs.

DRA should, however, already have a good idea of the substance of much of the utility and CAISO testimony. There have been multiple workshops on the modeling and input assumptions that are at the heart of the proceeding. Most recently, the utilities and the CAISO served the preliminary results of their modeling runs on April 29, 2011, followed by a workshop on May 10, 2011.

¹ The California Independent System Operator (CAISO) and other parties did not join in the motion for reconsideration, but may also present oral reply testimony under the same conditions.

Additionally, the utilities and the CAISO, in their May 18, 2011 motion requesting additional time, specifically identified the changes they proposed to make to the model.² At the May 24, 2011 hearing on this motion, DRA and other parties were given the opportunity to ask questions of the utilities and the CAISO on their proposed changes to the model.

In addition, it is not clear why DRA appears to be waiting for the utilities' testimony before it engages in discovery. Commission rules do not require DRA to wait for testimony to be served prior to issuing data requests or other forms of discovery. In short, DRA has already had significant informal discovery, and could have had significantly more discovery, both formal and informal, but appears to have chosen not to pursue it.

Nevertheless, DRA raises valid concerns about the size and complexity of the expected utility and CAISO testimony. In addition to the publicly-developed scenarios that are being modeled, the utilities have indicated that they are planning to present testimony based on new, utility-generated scenarios.

Accordingly, the date for service of testimony (by parties other than the utilities and the CAISO) previously set for July 26, 2011 is moved to August 4, 2011. Evidentiary hearings will now begin on August 11, 2011 and run through August 19, 2011.

Rules Track III Issues

This Ruling provides additional detail regarding the process for addressing certain Rules Track III issues. A prior Ruling stated:

Based on input from the parties and Energy Division staff, it is preliminarily determined that aspects of certain Rules

² See, *Motion of PG&E, SCE, SDG&E, and CAISO to Modify Track I Schedule.*

Track III issues will be addressed concurrently with the System Track I schedule set forth above, including:

1) procurement rules relating to once-through cooling issues; 2) refinements to the bid evaluation process, particular weighing competing bids between utility-owned generation and power purchase agreements; 3) refinements to the existing timelines associated with the utilities' RFOs for resource adequacy products; and 4) utility procurement of greenhouse gas related products.

Please note that some of these issues may be able to be addressed and resolved in their entirety on the System Track I schedule set forth in this Ruling, but others are too big and complex to completely resolve in the time available.

Accordingly, some of these issues may only be addressed in part, or certain threshold issues resolved.³

This Ruling confirms that we are addressing those four issues, plus one other issue, consisting of procurement oversight rules, including the oversight responsibilities and authority of various entities (including Independent Evaluators and the Procurement Review Group) and standards of conduct applicable to the utilities and their employees.

On all five of these issues, parties may make proposals via testimony, to be served concurrently with System Track 1 testimony. The utilities and CAISO are to serve this testimony on July 1, 2011 while other parties are to serve this testimony on August 4, 2011.

In their testimony, parties should clearly specify if their proposals are:

1) Specific proposals for the Commission to approve by the end of this calendar year on these issues;

³ *Administrative Law Judge's Ruling Revising System Track 1 Schedule*, March 10, 2011.

- 2) General policy recommendations that the Commission should consider, on an ongoing basis, when making determinations on these issues; or
- 3) Proposals for future Commission processes to address these issues.

On the first issue - procurement rules relating to once-through cooling issues - testimony should address the proposal attached as Appendix A to this Ruling.

On the fourth issue - utility procurement of greenhouse gas related products - each utility's testimony should provide a proposed greenhouse gas management framework (including evaluation of greenhouse gas risks associated with utility-owned generation, bilateral contracts, and spot market purchases), and explain how such a greenhouse gas management framework would govern the utility's proposed upfront achievable standards for greenhouse gas allowance and offset procurement.

On the fifth issue - procurement oversight rules - testimony should address the proposal attached as Appendix B to this Ruling.⁴

To date, these Rules Track 3 issues have been scheduled to be addressed concurrently with the System Track 1 issues. This remains the preferred approach, but other procedural approaches will be considered as well. A determination of the optimum procedural approach can best be made after the Rules Track 3 testimony is available, as it will be clearer whether the current schedule for these Rules Track 3 issues remains feasible. As previously noted, it

⁴ Parties should note that Appendix B is based upon Section O of the draft Procurement Manual or Rulebook, which parties have previously reviewed and commented upon in this proceeding. A separate matrix with more detail will be sent via separate e-mail.

may be possible only to address some of these issues in part, or to resolve certain threshold issues.

Parties may make recommendations in their testimony regarding the optimum procedural approach to be used in addressing these issues, and parties will be given an opportunity to present and discuss those recommendations at the beginning of the evidentiary hearings now scheduled for August 11-19, 2011.

IT IS RULED that:

1. The *Motion of Pacific Gas and Electric Company, Southern California Edison and San Diego Gas & Electric Company for Reconsideration of ALJ's Ruling* is denied.
2. Limited oral reply testimony will be available on August 11 and 12, 2011.
3. Any party seeking to offer oral reply testimony must show, prior to presenting such testimony, that the information it intends to present is not duplicative of its prior written testimony and that it could not be presented via briefing or cross examination.
4. The testimony previously due on July 26, 2011 is now due on August 4, 2011.
5. Evidentiary hearings are now set for August 11-19, 2011, CPUC Courtroom, 505 Van Ness Avenue, San Francisco, CA 94102.
6. DRA may serve data requests on all parties, including the utilities.
7. Rules Track III testimony should be consistent with the guidance given in this ruling.

8. Parties should be prepared on August 11, 2011, to discuss procedural approaches for addressing the identified Rules Track 3 issues.

Dated June 10, 2011, at San Francisco, California.

 /s/ PETER V. ALLEN
Peter V. Allen
Administrative Law Judge

Appendix A

Utilities may not enter into a contract for longer than one year with any facility identified in the State Water Resources Control Board's 'Statewide Water Control Policy on the Use of Coastal and Estuarine Waters Used for Power Plant Cooling' (Once-Through Cooling or OTC facilities), and Utilities may not enter into a contract with any OTC facility that requires operation of that facility beyond the compliance date identified in the SWRCB policy; unless:

a) A facility is found by the Water Resources Control Board to be fully in compliance with Section 316(b) of the Clean Water Act; or

b) If the Commission authorizes the procurement of new capacity in the LTPP proceeding, contracts longer than one year and/or that extend beyond the Water Resources Control Board OTC compliance date as detailed in the October 1, 2010 Statewide Water Control Policy on the Use of Coastal and Estuarine Waters Used for Power Plant Cooling or successor documents for the express purpose of enabling the repowering of those OTC facilities are permitted if those contracts do not result in operation of the once-through-cooling system beyond the compliance date; or

c) If an OTC facility elects to comply with the State Water Resources Control Board OTC policy by means of SWRCB Track 2 (under which water intake is reduced by 93% or screens or similar technologies that are expected to be approved by the State Water Resources Control Board are utilized), contracting with such a facility beyond the State Water Resources Control Board's compliance date is permitted. If the Track 2 compliance mechanism is not accepted for that OTC facility by the State Water Resources Control Board, any such contract must require that the contract terminate within one year from the date of the State Water Resources Control Board decision on the proposed Track 2 technology or before the State Water Resource Control Board's compliance date, whichever is sooner.

(END OF APPENDIX A)

Appendix B

Staff Proposal on Procurement Oversight Rules

Background

In D.07-12-052, the Commission encouraged the Energy Division to develop an “AB 57 Procurement Plan Implementation Manual” in collaboration with the IOUs and parties to the 2006 Long Term Procurement Plans (LTPP) proceeding.⁵ Development of the manual continued in Track III of the 2010 LTPP proceeding⁶, whereby a draft copy of the manual, referred to as the “Rulebook,” was circulated to parties. A workshop was held by Energy Division staff (Staff) on June 11, 2010 to further the development of the Rulebook. Parties submitted comments and reply comments on the Rulebook on June 21 and June 28, 2010, respectively.

In her June 2, 2010 Ruling in R.10-05-006, ALJ Kolakowski stated that the intent of the Rulebook is to develop a “clear compendium of current California Public Utilities Commission (CPUC) procurement requirements.” In comments filed on the Rulebook, the parties, with the exception of Southern California Edison, uniformly preferred the “compendium” characterization to mean that the Rulebook should serve as a non-enforceable, reference-only summary of existing Commission procurement rules derived from various decisions. The numerous arguments presented by parties in support of their non-enforceable, reference-only interpretation are varied and are already on record in their filed comments and replies, and so will not be repeated here. Energy Division staff, however, has consistently envisioned that the Rulebook should supersede existing decisions, in that the document would be treated as a General Order and will be fully enforceable. The Energy Division proposes that the Commission should adopt a Rulebook, or procurement manual, as a fully enforceable document.

⁵ R.06-02-013.

⁶ R.10-05-006.

Staff Proposal

Staff proposes that the attached procurement oversight rules, attached to this document as Attachment 1, should be adopted by the Commission in R.10-05-006 as a set of enforceable rules. These proposed rules spell out oversight responsibilities and authority by the Independent Evaluators (IEs), the Procurement Review Group (PRG), the Cost Allocation Mechanism (CAM) group, and the Energy Division. It also spells out Standards of Conduct (SOCs) applicable to the utilities and their employees in the course of their procurement activities. Most of the policy directives have been derived from past decisions and current practices. We have tried to clarify and elaborate on existing rules, with some minor changes that are designed to ensure that these oversight groups run smoothly and effectively.

The following is a brief summary of each of the four subsections in the proposed rules:

Section 1 deals with the selection and minimum qualifications of an IE, the oversight responsibilities of an IE.

Section 2 explains the rules related to participation, roles, and meeting protocols for the PRG.

Section 3 explains the rules related to participation, roles, and meeting protocols for the CAM Group.

Section 4 spells out the codes of conduct the IOUs and their staff are required to abide by in their procurement activities.

In places where the rules differ from prior Commission decisions due to operational and legal considerations, Staff proposes that the attached rules should prevail. At this time, Staff proposes to focus only on the Procurement Oversight and Advisory Requirement category in Track III of R.10-05-006. This is Section O in the original Rulebook.

Attachment 2, consisting of a separate matrix in Excel spreadsheet format, demonstrates the wording differences between the staff proposed rules and decision language, where applicable. As the matrix illustrates, most of

the differences between the language of the staff proposed rules and the decisions are minor. Only in a handful of cases do the staff-proposed rules consist of substantive changes from decision language. These substantive differences are summarized below:

1. New IE report filing requirement: For solicitations of products five years or greater in length, the IE report shall be filed with Energy Division and the PRG at least 7 calendar days before any IOU application is filed with the CPUC and the IE report should also be submitted as an attachment to the application.
2. New Reporting Requirement: In some circumstances, it may be necessary for an IE to produce two versions of an IE report: one public/redacted and another that is confidential. These two versions must be identical with the exception of redacting confidential information. There shall be no differences in the conclusions or non-confidential text.
3. New Procurement Review Group (PRG) protocol requirement: If an error is identified in PRG materials, a correction should be sent to the PRG members as soon as reasonably possible. PRG members may request a delay of the PRG meeting, if they believe that there is inadequate time to review the corrected materials.
4. New Procurement Review Group protocol requirement (underlined portion is new): The IOUs are to provide confidential meeting summaries to PRG members that include a list of attending PRG members (including the organizations represented), a summary of topics presented and discussed, and a list of information requested or offered to be supplied after the meeting, (and identify the requesting party). This meeting summary must be emailed to the PRG within 14 calendar days of the meeting.
5. New requirement on web-based PRG calendar (underlined portion is new): The IOUs are to individually set up and maintain a web-based PRG calendar that can be accessed and updated by the IOU. The IOUs are to provide the following information to the public through a web-based forum: date, meeting time and duration of the meeting; the individuals participating in the meeting and organization represented by the individual; and a list of non-confidential items discussed. This information shall be maintained

- on the web-based forum for at least 12 calendar months following the relevant PRG meeting, except in the case of materials related to RFOs or other applications to the Commission. Materials related to applications must be maintained until all applications (including any applications for rehearing, etc) related to those materials have been disposed by the Commission. Beyond the minimum retention time described above, this information can be moved to an archive page, which should still be publically accessible.
6. New PRG review requirement: Each IOU should confer with the PRG if material barriers to hedging arise. The PRG should discuss these barriers and potential actions that might be taken to eliminate them.
 7. Revised CAM group requirements: The proposal spells out the purpose and composition of the CAM group in greater detail than the decision language. It also spells out how often the CAM group should meet.
 8. Revised interview requirement of IEs (underlined portion is new): The IOU and PRG shall interview a subset of prospective candidates that the IOU, its PRG, and ED staff deem most suitable for the role. These interviews may be conducted by conference call and are subject to the PRG meeting protocols described above (2 (c)).
 9. Revised IE reevaluation period (underlined portion is new): An IE may remain in the IE pool for two years, after which he/she must go through a reevaluation process based upon the inclusion criteria (see Section 1 (b)) to assure continued compliance. The IOU may commence on the reevaluation of an IE no sooner than two months before the two year reevaluation period for that IE. The reevaluation process will involve additional reviews of the IE candidate by the PRG, IOU and ED staff including additional interviews, if necessary.

Staff Proposal to Make QCR Audit Reports Public

The Commission currently requires “each IOU to submit a Quarterly Compliance Report (QCR) via the Commission’s advice letter process within 30 days of the end of every calendar quarter, in order for Commission Staff to review the IOUs’ procurement transactions for compliance with the Commission-approved procurement plan and its up-front and achievable standards and criteria”.⁷ A procurement plan approved by the Commission “eliminates the need for after-the-fact reasonableness review by establishing up-front achievable standards and criteria”. It “ensures that IOUs recover procurement costs incurred pursuant to an approved procurement plan”.⁸ Commission staff conducts an audit of the QCRs to verify that the IOUs are in fact complying with standards and criteria established and approved in the IOUs’ procurement plans. Energy Division believes that the QCR audit findings serve to inform the procurement cost recovery Commission authorizes in the Energy Resource Recovery Account (ERRA) proceedings.

The Commission currently has confidentiality rules governing audits. General Order 66-C stipulates that audits made by the Commission are confidential and not for public disclosure, except to the extent disclosed at a hearing or by formal Commission action.⁹ P.U. Code Section 583 requires that “no information furnished to the Commission by a public utility shall be made public except by order of the Commission or by the Commission in the course of a hearing or proceeding”.

Energy Division proposes to modify the procurement rules to make the QCR audit reports available to the public and recommends that the Commission adopt Energy Division’s proposal. Before making the QCR audit reports public, Energy Division proposes to establish a review process to ensure that these reports contain only information that the

⁷ D.07-12-052, pp 185

⁸ P.U. Code Section 454.5 (c)(3), (d)(2)(3)

⁹ General Order 66-C, 2.2(a)

public is permitted to access pursuant to the Commission's confidentiality rules.¹⁰ Energy Division proposes that staff will redact market-sensitive information from the audit reports. IOUs will have an opportunity to review and comment on the audit reports. Energy Division will review the comments from the IOUs and resolve any discrepancies between the IOUs' concerns and the audit reports. In the event that these discrepancies persist, the IOUs' rebuttals to the QCR audit reports will also be made available to the public. Energy Division proposes to allow IOUs two weeks to review the QCR audit reports. After the audit and review process is completed each quarter, Energy Division will make QCR audit reports public by posting them on the Commission's website.

¹⁰ General Order 66-C, 2.2(b), D.06-06-066

Attachment 1: Proposed Procurement Oversight Rules

SECTION 1: INDEPENDENT EVALUATOR OVERSIGHT

The role of an Independent Evaluator (IE) is to monitor the fair and unbiased nature of an Investor-Owned Utility (IOU)'s procurement solicitation process, including, but not limited to: all communications about the solicitation to market participants, the operation of the solicitation, and the selection and negotiation process. IEs provide an independent evaluation of the IOU's bid evaluation and selection process and help inform the Commission and the Procurement Review Group (PRG) about the process.

1 (a) General IE/ IE Reports Requirements

An IE shall be contracted with, by the IOU, and retained for all competitive solicitations that involve affiliate transactions, utility-owned bids, Power Purchase and Sale Agreements (PSA) bids, and all competitive Request for Offer (RFO)s seeking products two years or greater in duration regardless of the bidders. Competitive RFOs include RFOs issued to satisfy service area need and supply side resources not including Energy Efficiency and Demand Response.

Although the IE shall be under contract to the IOU, the IE shall respond to the requests and information requests of the PRG and Energy Division. Such communications may be directly between the Energy Division or PRG and the IE, without any involvement or knowledge of the IOU.

Alternatively, the Executive Director may hire contractors to perform IE tasks, with management oversight of the IEs to be provided by the Energy Division. Such costs, if any, shall not exceed a total annual amount of \$400,000, and the total shall be paid by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company on a pro rata basis (i.e., 33.3% to each IOU) unless the contractor(s) perform work related to only a specific utility. SCE, PG&E and SDG&E are authorized to establish an LTPP Technical Assistance Memorandum Account (LTAMA) for the purpose of

recording such payments. PG&E, SCE, SDG&E are authorized to record these LTPP technical contractor costs into the LTAMA. These costs shall be recorded when paid, and each company may later apply for recovery in rates.

- For solicitations of products five years or greater in length, the IE report shall be filed with Energy Division and the PRG, at least seven calendar days before any IOU application is filed with the Commission and the IE report should also be submitted as an attachment to the application.
- For solicitations of products less than five years in length, the IE report shall be filed with the [Quarterly Compliance Fling Report](#), using the long and short versions of the IE Report Template developed by Energy Division. The [Quarterly Compliance Fling Report](#) is a quarterly report filed by each IOU within thirty days of the end of each quarter, via Tier 2 Advice Letter, for all transactions executed in the previous quarter.
- The use of an IE is also required in resource solicitations where an IOU seeks authorization to allocate new generation costs in accordance with the mechanism set forth in D.06-07-029, and the IOUs must retain an IE to administer the Cost Allocation Mechanism energy auction.
- Prior to drafting RFO bid documents, each IOU must hold a meeting with the IE, PRG and Energy Division to outline its plans which must include quantities and types of products the IOU intends to solicit, category definitions if multiple bid categories are envisioned, any unique circumstances to be addressed in the RFO, and the plan should also solicit feedback. Then, the draft RFO bid documents are to be developed under the oversight of an IE. However, the IEs are not permitted to make binding decisions on behalf of the IOUs.
- IEs shall make periodic presentations regarding their findings to the IOU and to the PRG.
- Each IOU is to provide the name and information of the IE, the procurement solicitation(s) the IE has been used for and the amount of money involved in the procurement solicitation(s) be reported to the IOU's PRG before and after the solicitation takes place.

1 (b) IE Qualifications

An IE shall have the following minimum qualifications:

- A minimum criterion for independence is that the IE has no financial interest in any of the potential bidders, including the affiliate, or in the outcome of the process.
- The IE shall be able to make a determination that the Request for Proposal process is transparent and fair and that the Request for Proposal issuer's decision is not influenced by any affiliate relationships.
- IEs shall be available to testify as an expert witness in any associated Commission proceeding regarding upfront review of potential solicitation transactions.
- IEs shall have the following qualifications: (1) technical expertise germane to evaluating resource solicitation power products (i.e. they should not be general observers hoping to be educated on the job); (2) skilled in analyzing a range of power market derivatives (e.g. futures, contracts, options, swaps); (3) familiarity with the various standard contracts and industry practices; (4) experience analyzing the relative merits of various types of Power Purchase Agreements (PPAs); and (5) the ability to evaluate PPAs, PSAs and IOU-built projects on a side-by-side basis.
- IEs shall comply with the appropriate Fair Political Practices Commission guidelines in order to avoid conflicts of interest.
- The IOUs, in consultation with the PRG and Energy Division, shall develop comprehensive conflict of interest disclosure requirements for the IE. An IE may be disqualified from participating in an RFO process if there are particular egregious conflicts of interest that arise during the contract. The conflict of interest disclosure requirements shall be approved along with the standard contracts in the next Long Term Procurement Plan proceeding.

1 (c) IOU IE Pool Requirements

Each IOU, in conjunction with each respective PRG, shall develop a pool of at least three, but preferably more, IEs. Each IOU should develop and periodically add to its IE pool as follows:

- The IOU shall develop a list of prospective IEs via industry contacts, literature searches, PRG recommendations, and similar methods, solicit information from the prospective IEs and circulate the list of candidates and their “resumes” to the PRG and Energy Division staff for feedback.
- The IE expertise and qualifications provided in Section 1(b) represent the minimum necessary for an IE to be effective, and the IOU and the PRG should include any additional relevant information that it has gained through its experiences implementing the IE requirements.
- The IOU and PRG shall interview a subset of prospective candidates that the IOU, PRG, and Energy Division staff deem most suitable for the role. IOUs should arrange for the PRG to conduct interviews with candidate IEs in isolation from the contracting IOU.
- The PRG shall coordinate the development and submittal to the IOU its recommendations on each prospective candidate including the general consensus and any opposition to the consensus. The IOU shall submit a written list of qualified IEs to Energy Division to add to the contracting IOU’s pool. The list must contain the recommendations of the PRG that were submitted to the IOU. Energy Division will evaluate the proposed IE’s competencies as well as evaluating the IE’s independence including any conflicts of interest. Energy Division shall give final approval for inclusion of an IE in the IE pool by letter to the IOU. Energy Division will also have the right to final approval of the use of a particular IE for each RFO.
- Beyond the development of the initial IE pool, additional IE’s may be added to the pool by following the same procedures listed above.
- An IE may remain in the IE pool for two years, after which he/she must go through a reevaluation process based upon the inclusion criteria as defined in Section 1 (b) to assure continued compliance. The IOU may commence on the reevaluation of an IE no sooner than

two months before the two year reevaluation period for that IE. The reevaluation process will involve additional reviews of the IE candidate by the PRG, IOU and Energy Division staff including additional interviews, if necessary.

- The IOU shall develop a pro forma contract to be used each time it contracts with an IE. If deviations from the pro forma contract are necessary, the modifications must be fully supported when the IOU seeks final approval of the contract. This pro forma contract shall be submitted as part of the next Long Term Procurement Plan filing and will be subject to Commission approval.

1 (d) IE Report Requirements

In some circumstances, it may be necessary for an IE to produce two versions of an IE report: one public/redacted and another that is confidential. These two versions must be identical with the exception of redacting confidential information. There shall be no differences in the conclusions or non-confidential text.

SECTION 2: PROCUREMENT REVIEW GROUP

Each IOU is required to establish a Procurement Review Group (PRG) to review and make recommendations concerning proposed contracts and procurement processes on an expedited basis.

2 (a) PRG Participants

The PRG is to consist of 1) members from the Energy Division, who will be ex officio members of the PRG; 2) members from the Division of Ratepayer Advocates, who will be ex officio members of the PRG and 3) a limited number of members, who are non-market participants as defined in the Protective Order¹¹. The California Energy Commission and IOU are invited to participate in the PRG. The non-market participants are required to sign the appropriate non-disclosure agreement and should agree to review and make recommendations

¹¹ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/94608.pdf

concerning proposed contracts and procurement processes. Eligible non-market participants may request intervenor compensation.

Parties, who wish to attend the PRG meetings as non-market participants, are to identify their proposed Reviewing Representatives, as defined in the Protective Order, to the IOU and the Energy Division Director and provide curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last ten years. The IOU and the Energy Division Director shall advise the proposing party in writing within three business days from receipt of the notice if either or both of them object to the proposed Reviewing Representative, setting forth in detail the reasons. In the event of such objection, the proposing party, the IOU, and the Energy Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the assigned Administrative Law Judge (ALJ) or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity, or the direct supervision of any employee(s) whose duties include such activities, or the bidding on or purchasing of power plants or consulting on such matters, or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting. Absent unusual circumstances as determined by the ALJ, a candidate who falls within the above criteria will ordinarily be deemed ineligible to serve as a Reviewing Representative.

2 (b) PRG Review of Overall Procurement Process

Each IOU is to maintain and routinely consult with a PRG at least on a quarterly basis. The PRG is to review and assess the details of the IOUs' overall procurement strategy and specific proposed procurement contracts and processes prior to submitting filings to the Commission including, but not limited to the following:

- On a quarterly basis, each IOU will review with its PRG fuel forecasts; the IOU's open position; changes in market conditions from the previous quarter, including natural gas and electric prices, hedging strategies going forward, and the necessity of filing a plan update.

- The IOU will consult with their PRGs on all transactions with delivery periods greater than three calendar months.
- The IOU will consult with their PRGs on instances in which its estimated portfolio risk exceeds the Customer Risk Threshold by 25%.
- Each IOU should confer with the PRG if material barriers to hedging arise and the PRG should discuss these barriers and potential actions that might be taken to eliminate them. If the IOU decides, after good faith consultation with its PRG, that hedging strategy modifications are needed, either specific to any identified material barriers or to the hedging strategy in general, the IOU must file these modifications in the form of an expedited application, within fifteen days of the PRG meeting in which the recommended changes are discussed. Until the application is approved, the utility may operate under its existing plan.

2 (c) PRG Review of the Request for Offer Process

Prior to drafting Request for Offer (RFO) bid documents, each IOU must hold a meeting with the IE, PRG, and Energy Division to outline its plans which must include quantities and types of products the IOU intends to solicit, category definitions if multiple bid categories are envisioned, any unique circumstances to be addressed in the RFO, and the plan should also solicit feedback. The draft bid documents should include clear descriptions of the bid criteria, including the rationale for selecting and weighting the criteria, and the evaluation and selection process. The draft bid documents are to be vetted through the PRGs, and any differences are to be resolved with Energy Division staff in advance of the public issuance of bid documents. In addition, the IOU is to provide the PRG and Energy Division staff a decision rationale with respect to each selected and rejected bid upon completion of an RFO. The IOU should meet with the PRG again to assess the resulting bids, the winning procurement contracts and reasonableness criteria prior to filing an application for contract approval. The PRG would assess the procurement contracts and reasonableness criteria with each utility and offer assessments and recommendations to each utility and then to the Commission when the contracts and/or reasonableness criteria are submitted for expedited Commission review.

2 (d) PRG and IEs

For solicitations of products five years or greater in length, the IE report shall be filed with Energy Division and the PRG at least seven calendar days before any IOU application is filed with the CPUC and the IE report should also be submitted as an attachment to the application.

IEs shall make periodic presentations regarding their findings to the IOU and to the PRG.

Each IOU, in conjunction with each respective PRG, shall develop a pool of IEs according to Section 1 (c).

2 (e) PRG Oversight of Congestion Revenue Rights

When proposed or completed Congestion Revenue Right (CRR) procurement is reported to the PRG, the IOU shall present at least the following information:

Basic information about each of the relevant CRRs, including: source, sink, MW quantity, term, expected value, past performance, bid price, and a description of the underlying arrangement that the CRR will hedge.

The contribution of congestion risk to Time to Expiration Value at Risk (TeVAR).

The reduction or increase in TeVAR due to the CRR procurement.

The change in the overall portfolio expected value to the ratepayers due to the CRR procurement, including the CRR procurement costs, congestion costs, and expected CRR revenues/payments.

To the extent that exact calculations of these quantities are not practical, the IOU shall present a best-estimate and describe the estimation methodology. Since the ISO allocation and auctions are the primary venue for CRR procurement, if an IOU plans to purchase CRRs via other mechanisms it shall consult with the PRG.

2 (f) PRG Meeting Protocols

- IOUs are to provide PRG members with meeting agendas and materials at least 48 hours in advance of the PRG meeting, unless there are unusual, extenuating circumstances that the IOU communicates to PRG members in an email announcing a meeting or distributing meeting materials on a tighter timeframe. If an error is identified in PRG materials, a correction should be sent to the PRG members as soon as reasonably possible. PRG members may request a delay of the PRG meeting, if they believe that there is inadequate time to review the corrected materials.
- The IOUs are to provide confidential meeting summaries to PRG members that include a list of attending PRG members, including the organizations represented, a summary of topics presented and discussed, and a list of information requested or offered to be supplied after the meeting, (and identify the requesting party). This meeting summary must be emailed to the PRG within fourteen calendar days of the meeting.
- The IOUs are to individually set up and maintain a web-based PRG calendar that can be accessed and updated by the IOU.

- The IOUs are to provide the following information to the public through a web-based forum: date, meeting time and duration of the meeting; the individuals participating in the meeting and organization represented by the individual; and a list of non-confidential items discussed. This information shall be maintained on the web-based forum for at least twelve calendar months following the relevant PRG meeting, except in the case of materials related to RFOs or other applications to the Commission. Materials related to applications must be maintained until all applications (including any applications for rehearing, etc) related to those materials have been disposed by the Commission. Beyond the minimum retention time described above, this information can be moved to an archive page, which should still be publically accessible.
- When the utility specifies that it will procure new generation resources and recover the costs associated with these resources solely from bundled utility customers, the PRG will continue to serve as the utility's advisory group. When procuring or potentially procuring Cost Allocation Mechanism resources, the IOUs are to utilize an advisory Group consistent with the proposal as presented in Section 3.
- The members of each PRG would be committed to devote the time necessary to meet and confer with the utilities on each proposed contract and/or procurement process and provide written comments to the utilities within no later than fifteen days of initiation of the review process.

SECTION 3: COST ALLOCATION MECHANISM GROUP

Each IOU shall develop and convene an advisory Cost Allocation Mechanism (CAM) group for which IOUs recover costs from bundled and unbundled customers using the D.06-07-027 CAM or its successor. The CAM Group will operate identically to the PRG, except that it will only review and consult on procurement activities for which costs may be recovered using the CAM. The IOU will notify the ED and the participants of the CAM Group at the time of its decision to begin such procurement. If

the utility is undecided at the time it begins its procurement process, the utility will employ the CAM Group for all associated advisory group meetings until such time as it decides to restrict procurement solely to meet its bundled customers' need.

3 (a) CAM Participants

The current PRG participants will be participants of the CAM Group, if they so choose, subject to their execution of a non-disclosure agreement for the CAM Group. The Commission personnel may participate in an IOU's CAM Group under the same conditions that they participate in the IOU's PRG. The CAM group shall also include one member representing Community Choice Aggregator (CCA) customers and two members representing Direct Access (DA) customers. Each non-PRG participant in the CAM Group will either be an end-use customer or an individual hired to represent end-use customers' interests, and shall not be a wholesale market participant or represent a wholesale market participant. For example, the representative for DA customers could be a non-wholesale market participant end-use customer who has accounts supplied through DA service. The CCA representative could be non-wholesale market participant resident of the community that has implemented a CCA. Alternatively, the non-PRG CAM Group participants could be consultants or attorneys for groups that represent DA end-use customers, CCAs, or other non-bundled customers in whole or in part in proceedings before the Commission, provided that the representatives execute and comply with the non-disclosure agreement for the CAM Group. Disputes regarding the appropriateness of an entity, or its representatives, participating in the CAM Group shall be submitted to the Commission for resolution.

Non-PRG participants of the CAM Group are obligated to sign the same non-disclosure agreement that is signed by the PRG participants, except that it will be modified only as necessary to reflect the new organization of customer interests in the CAM Group. If future Commission definition of the CAM identifies non-bundled customers in addition to CCA customers and DA customers, they shall be represented by one member in the CAM Group. Further, if sufficient non-bundled participants to meet this requirement do not agree to participate in the CAM group, the IOU shall inform the Energy Division; if approved by the Energy Division, the IOU may proceed with the CAM process with review by the PRG and an incomplete CAM group PRG participants should continue to be eligible to obtain intervenor compensation for their participation in the CAM Group under the same conditions that the Commission's rules govern such compensation for PRG participation. Non-PRG participants who are authorized to receive intervenor compensation shall qualify for such compensation for their activities in the CAM Group pursuant to the Commission's rules that govern such compensation.

3 (b) CAM Review of Procurement and RFO Process

The CAM Group will operate identically to the PRG, except that it will only review and consult on procurement activities for which costs may be recovered using the CAM. Meetings of the PRGs addressing procurement for bundled utility customers may be held immediately before or after the meetings of the CAM Group or at any other time. The CAM group will not convene during the planning (i.e., the load and system net-short forecasting) process for meeting bundled utility customers' needs. The CAM Group will convene at least seven days prior to a utility's issuance to

the marketplace of the RFO solicitation for which costs may be recovered using the CAM.

3 (c) CAM Meeting Protocols

- Unlike the PRG, the utilities will not be obligated to conduct quarterly face-to-face meetings with the CAM group.
- The CAM Group participants will have access to the same types and quality of information as do PRG participants, except that the scope of the procurement review will be limited to that for which costs may be recovered using the CAM (i.e., CAM Group participants are not entitled to receive information that is related to bundled-service procurement, except that PRG participants may request such in)

SECTION 4: STANDARDS OF CONDUCT

4 (a) IOU Standards of Conduct

- The Standard of Conduct 1- Arm's Length Transactions and Self-Dealing. Each utility must conduct all procurement through a competitive process with only arm's length transactions. Transactions involving any self-dealing to the benefit of the utility or any affiliate, directly or indirectly, including transactions involving an unaffiliated third party, are prohibited, except for circumstances explicitly exempted by Commission guidance, as described in Affiliate Transaction requirement described in Section 4 (b). This does not preclude the IOUs from entering into "anonymous" transactions through approved interstate brokers and exchanges, provided that the solicitation/bidding process is structured so that the identity of the seller is not known to the buyer until agreement is reached, and vice-versa.
- The Standard of Conduct 2- Employee Code of Conduct. Each utility must adopt, actively monitor, and enforce compliance with a comprehensive code of conduct for all employees engaged in the procurement process that: (1) identifies trade secrets and other confidential information, (2) specifies procedures for ensuring that such information retains its trade secret and/or confidential status, (3) discusses employee actions that may inadvertently waive or jeopardize trade secrets and other privileges, (4) discusses employee or former employee activities that may involve misappropriation of

trade secrets or other confidential information, unlawful solicitation of former clients or customers of the utility, or otherwise constitute unlawful conduct, and (5) requires or encourages negotiation of covenants not to compete to the extent such covenants are lawful under the circumstances. All employees with knowledge of a utility's procurement strategies shall be required to sign and abide by this code of conduct and to refrain from disclosing, misappropriating, or utilizing the utility's trade secrets and other confidential information during or subsequent to their employment by the utility.

- The Standard of Conduct 3- Misrepresentation of Facts. In filing transactions for approval, the utilities SHALL make no misrepresentation or omission of material facts of which they are, or should be aware.
- The Standard of Conduct 4- Prudent Administration of Contracts. The utilities SHALL prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner. The utility bears the burden of proving compliance with the standards set forth in its plan. Prudent contract administration includes administration of all contracts within the terms and conditions of those contracts, including dispatching dispatchable contracts when it is economical to do so. In administering contracts, the utilities have the responsibility to dispose of economic long power and to purchase economic short power in a manner that minimizes ratepayer costs. Once a contract has been deemed compliant with the utilities' procurement plan, the contract terms and prices are not subject to a reasonableness review. However, the administration of the contract by the utility to comply with least-cost dispatch remains subject to reasonableness review and disallowance through Energy Resource Recovery Account proceedings.
- The Standard of Conduct 5- Fraud, abuse, negligence, or gross incompetence. IOUs shall not engage in fraud, abuse, negligence, or gross incompetence in negotiating procurement transactions or administering contracts and generation resources.

4 (b) Affiliate Transactions

- Long-Term and Medium-Term Transactions - IOUs are permitted to enter into long- and medium-term transactions with affiliates, so

long as such transactions take place through an open and transparent solicitation process.

- Short-Term Transactions - Anonymous transactions with affiliates are permissible if conducted through the ISO, brokers or exchanges. Otherwise, no short-term transactions may be consummated with an IOU affiliate. When the Commission instituted the ban on affiliate transactions, it specifically carved out an exception to the ban for anonymous transactions conducted through the ISO. Subsequently, the Commission expanded the scope of that exception to include anonymous transactions conducted through brokers or exchanges.
- Transactions for Natural Gas Services - Transactions for natural gas services between SDG&E and SoCalGas and between PG&E and affiliates and operating divisions that are found necessary and beneficial for ratepayer interests are permitted. These transactions should be subject to the rules adopted in Resolutions E-3838 and E-3825.
- Grandfathering - Existing contractual relationships with affiliates (e.g., Qualifying Facilities contracts) are permitted for the life of the plant.

4 (c) Employee Code of Conduct - Utility-Owned Generation and

Independent Power Plants Head-to-Head Competition

As a precondition for conducting an RFO seeking utility ownership options, the IOU, in conjunction with its IE, PRG, and Energy Division staff shall develop a strict code of conduct – to be signed by any and all IOU personnel involved in the RFO process – to prevent sharing of sensitive information between staff involved in developing utility bids and staff who create the bid evaluation criteria and select winning bids.

(END OF APPENDIX B)