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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) **(NOT CONSOLIDATED)**
Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions.	Rulemaking 11-03-012 (Filed March 24, 2011)

JOINT ADMINISTRATIVE LAW JUDGES' RULING CLARIFYING VENUE FOR CONSIDERATION OF COSTS RELATED TO PROCUREMENT OF GREENHOUSE GAS ALLOWANCES

On May 6, 2010, the Commission opened Rulemaking (R.) 10-05-006 to address long term procurement policy and planning, as well as to consider the electric long term procurement plans proposed by investor-owned utilities (IOUs). On March 30, 2011, the Commission opened R.11-03-012 to address some specific issues related to greenhouse gas (GHG) emissions. This ruling clarifies that issues related to GHG compliance product procurement, including any necessary procurement authority, standards, and the recovery of costs associated with the cap and trade regime pursuant to Assembly Bill 32, remain in the long term procurement planning proceeding, R.10-05-006.

1. Background

The R.10-05-006 is a wide-ranging rulemaking addressing long-term procurement planning, policy, and approval of specific utilities' long-term procurement plans. The preliminary scoping memo in the recently issue GHG rulemaking, R.11-03-012, raises potentially overlapping issues, stating that the proceeding may address, among other things, "various aspects of the utilities' management of their potential GHG cost exposure, [including] the arrangements for GHG compliance responsibility in bilateral contracts as well as utilities' participation in the GHG allowance and offset markets."[1] Because some issues related to GHG emissions compliance costs, including procurement authority for GHG allowances or offsets, could also fit within the scope of the LTPP rulemaking, R.11-03-012 states that "[e]ither R.10-05-006 or this [GHG rulemaking] may consider the establishment of guidelines for the utilities' possible participation in GHG emissions allowance and offset markets."[2]

This ruling resolves the uncertainty raised by this overlap, and confirms that issues of GHG compliance costs that may affect procurement remain within the scope of the LTPP proceeding, as it was originally scoped. Furthermore, this ruling finds that GHG compliance costs associated with contracts executed between independent generators and utilities prior to the passage of AB 32, which do not provide for pass-through of such costs, would be more appropriately addressed in an LTPP proceeding.

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[1] R.11-03-012, at 18.

[2] R.11-03-012, at 18.

2. Appropriate Proceeding for GHG-related Procurement Issues

In comments filed on the GHG rulemaking, several parties noted the potential overlap between these proceedings on GHG-related procurement issues, and expressed preferences on which proceeding should resolve those issues. Parties that supported resolving GHG-related procurement issues in the LTPP proceeding included Southern California Edison, San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Gas Company. Parties in support of resolving these issues in the GHG OIR include the City and County of San Francisco, the Direct Access Customer Coalition, the Division of Ratepayer Advocates, PacifiCorp d/b/a Pacific Power Company (PacifiCorp), and the Western Power Trading Forum.

Parties in favor of resolving issues related to GHG compliance product procurement in the LTPP proceeding, including any necessary procurement authority, standards, and the recovery of costs associated with the cap and trade program pursuant to Assembly Bill (AB) 32, generally argue that it would be most efficient for all procurement-related issues to be resolved in one proceeding. According to these parties, the LTPP proceeding is the appropriate forum to address GHG-related procurement as procurement of GHG compliance products is a subset of procurement more generally, for which the LTPP serves as the venue for review and approval of the utilities' procurement plans. This would facilitate consistency between the review of GHG-related procurement activities and other types of procurement, and would simplify parties' participation by limiting these issues to one proceeding.

In contrast, parties in favor of resolving the overlap issues in the GHG rulemaking assert that the examination of GHG compliance cost issues should be

coordinated with decisions on the use of revenues from GHG allowances and offsets. Some parties, including DRA, also argue that GHG compliance costs and related issues could be addressed in more detail in the context of the GHG proceeding than in the LTPP proceeding, which already contains a broad range of issues and has a very full procedural schedule. PacifiCorp further argues that it, as multi-jurisdictional utility, has been excused from participating in the LTPP proceeding, and that it would be inefficient for that company to participate in that broad rulemaking because of interest in this single issue. For this reason, PacifiCorp suggests that at least its own GHG-related procurement issues should be addressed in the GHG proceeding.

Based on parties' comments on the preliminary scope of the GHG proceeding and review of the current scope of the LTPP proceeding, we find that all issues related to GHG risk management, procurement and compliance costs, as described below, will remain in the LTPP proceeding for both large, investor-owned utilities and the small and/or multi-jurisdictional utilities, including PacifiCorp. This is consistent with the original scope of the LTPP proceeding, and will provide for consistency in the review of GHG-related compliance costs and other procurement issues. Utility electricity procurement, as well as the associated risks and hedging strategies are addressed on a portfolio basis in the LTPP proceeding. To the degree that the need to procure GHG compliance and hedging products is a function of electricity procurement, it makes sense to consider them together with utility procurement activities more generally. In addition, in our view, how the utilities use the revenues from the auction of emission allowances is largely a separate question from the manner in which the utilities' engage in the GHG compliance market. It is not clear how the utilities' respective GHG-related procurement strategies would bear on the

determination we intend to make regarding the appropriate use of allowance revenues, or vice versa.

We, along with energy division staff, will coordinate between the LTPP and GHG proceedings to facilitate timely resolution of all issues within the scope of each proceeding.[3]

3. GHG Compliance Cost and Procurement-Related Issues

In the LTPP proceeding, utilities have been directed that their 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 should also explain how such a greenhouse gas management framework would govern the utility's proposed upfront achievable standards for greenhouse gas allowance and offset procurement. (See, *Administrative Law Judge's Ruling Addressing Motion for Reconsideration, Motion Regarding Track I Schedule, and Rules Track III Issues*, dated June 13, 2011.)

[3] This Ruling does not affect the AB 32 Implementation Fee issues currently before the Commission in Applications 10-08-002 and 11-03-010. Those GHG-related issues remain in those proceedings.

IT IS RULED that issues related to GHG risk management, procurement and compliance costs as described in Section 3 of this ruling, remain within the scope of R.10-05-006 as that proceeding was originally scoped, and will not be resolved in the GHG rulemaking, R.11-03-012.

Dated August 4, 2011, at San Francisco, California.

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

/s/ JESSICA T. HECHT
Jessica T. Hecht
Administrative Law Judge

/s/ MELISSA K. SEMCER
Melissa K. Semcer
Administrative Law Judge