

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

RULEMAKING _____

ORDER INSTITUTING RULEMAKING**1. Summary**

We open this rulemaking to continue our efforts to ensure a reliable and cost-effective electricity supply in California through integration and refinement of a comprehensive set of procurement policies, practices and procedures underlying long-term procurement plans (LTPPs). The LTPP proceeding is the successor to Rulemaking (R.) 06-02-013,¹ R.04-04-003,² and R.01-10-024,³ and it will be the forum in which we consider, in an integrated fashion, the Commission's electric resource procurement policies and programs.

In this Order Instituting Rulemaking (OIR), we intend to consider standardized resource planning practices, assumptions and analytic techniques

¹ *Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans*, dated February 16, 2006.

² *Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning*, dated April 1, 2004.

³ *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development*, dated October 29, 2001.

applied to LTPPs; interim standards and practices to evaluate the uncertain costs of future greenhouse gas (GHG) regulations; a methodology to quantify energy efficiency (EE) in the California Energy Commission's (CEC) forecast; methodologies to estimate firm capacity from demand-side resources; system versus bundled resource need; refinements to the bid evaluation process; and other LTPP implementation issues as identified, including impact of the implementation of the market redesign and technology update (MRTU) on procurement.

2. Background

This LTPP proceeding is the successor to R.01-10-024, R.04-04-003, and R.06-02-013, the rulemakings initiated by the Commission to ensure that the investor-owned utilities (IOUs) could resume procurement responsibilities on behalf of their customers. The LTPP proceedings operate on a two-year cycle with the IOUs responsible for submitting procurement plans that project their need, and their action plan for meeting that need, over a ten-year horizon. Pursuant to Assembly Bill (AB) 57,⁴ codified as Section 454.5 in the Public Utilities Code, once the Commission approves the plans the IOUs are required to submit, the Commission establishes "up-front standards" for the IOUs' procurement activities and cost recovery. This obviates the need for after-the-fact reasonableness review by the Commission of the resulting utility procurement decisions.

⁴ AB 57 (Stats. 2002, Ch. 850, Sec 3, Effective September 24, 2002), added Pub. Util. Code § 454.5., enabling utilities to resume procurement of electric resources.

In Decision (D.) 04-01-050, the Commission established that each load serving entity (LSE) has an obligation to acquire sufficient reserves for its customer loads, endorsed a hybrid market structure, and extended utilities' procurement authority into 2005. In D.04-12-048, the Commission approved the IOUs' long-term procurement plans and gave the IOUs procurement authority for short, medium, and long term contracts for the planning period 2005 through 2014.

D.07-12-052 approved, with modifications and compliance filings, the LTPPs for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company for 2007-2016.

Since the 2006 LTPP proceeding was initiated, the legislature also passed AB 32⁵ and Senate Bill (SB) 1368,⁶ California's Climate Change laws, providing further guidance to the Commission. "Upfront standards" for procurement must now consider carbon risk when filling net short positions with fossil resources, so as not to "crowd out" preferred resources or incur stranded costs by purchasing technology that may soon become obsolete.

As has been done before, we will use the Energy Action Plan (EAP) as our guidepost in this proceeding.⁷ Under the EAP, the State's energy agencies have jointly adopted the goal "for California's energy to be adequate, affordable,

⁵ AB 32 (Stats. 2006, Ch. 488, effective September 27, 2006).

⁶ SB 1368 (Stats. 2006, Ch. 598, effective September 29, 2006).

⁷ EAP I was issued jointly on May 8, 2003, by the Commission, the CEC and the California Consumer Power and Conservation Financing Authority. EAP I was updated with the adoption of EAP II, as a joint policy plan of the CPUC and the CEC, in October 2005. *See*

www.energy.ca.gov/energy_action_plan/2005-09-21_EAP2_FINAL.PDF.

technologically advanced, and environmentally-sound.”⁸ The agencies developed a set of priorities for energy policy, many of which are directly relevant to this rulemaking. A primary focus in the LTPP proceeding is implementation of the EAP loading order, in the order of EE, demand response (DR), renewables, distributed generation, and clean fossil-fuel.

We will also consider the CEC’s 2007 Integrated Energy Policy Report (IEPR), for procurement-related recommendations during this and related rulemakings.⁹

3. Long-Term Procurement Plan Proceeding: 2008-2010

Previous LTPP rulemakings have reviewed and addressed a diverse, complex, and wide-ranging array of issues regarding procurement plans, practices and procedures. As such, we understand that the fundamental aspects of the LTPP program have been settled, at least for the present time. For example, the Commission determined that there was not sufficient investment in new generation in California to sustain the future needs of the utilities. To encourage new power plant investment, the Commission, in D.06-07-029, directed the IOUs to enter into long-term contracts for power to meet the energy needs of their entire distribution area, and established a cost allocation mechanism (CAM) whereby all benefiting customers will share in the capacity rights and costs pursuant to the CAM.

⁸ *Energy Action Plan II*, at p. 2.

⁹ CEC 2007 Integrated Energy Policy Report, CEC-100-2007-008, November 2007. *See* www.energy.ca.gov/2007publications/CEC-100-2007-008/CEC-100-2007-008-CTF.PDF.

Further, the 2006 LTPP Rulemaking directed the utilities to consolidate the vast body of procurement-related policies and procedures into one, single, comprehensive, and authoritative document – the 2006 LTPPs. It was our intent to have the approved 2006 LTPPs supersede all the previous procurement authority, including advice letter amendments, and to incorporate all other Commission and legislative directives related to procurement policies and practices. D.07-12-052 approved the 2006 LTPPs, subject to the IOUs making compliance filings that comport with the orders set forth in the decision. We are, however, continuing to work towards one approved, integrated LTPP for each IOU. Accordingly, we envision this LTPP proceeding as a fine-tuning of the LTPP program, and not a broader restructuring. In addition, we do not intend this proceeding to be an opportunity to re-litigate major policy issues decided in prior Commission decisions.

While the LTPP process is designed to provide for a biennial review of the IOUs LTPPs, because the 2006 process just concluded with a decision on December 20, 2007, we will not require the IOUs to file new 2008 LTPPs at this time. D.07-12-052 is based on recent information concerning the IOUs' need assessments, such as the most current CEC demand forecast;¹⁰ it directs the IOUs to make compliance filings that include up-dated relevant data; and it extends procurement authority through 2015.

Given these adjustments made in D.07-12-052, this successor rulemaking will *not* review and approve a new set of LTPPs. Rather, this rulemaking will

¹⁰ *California Energy Demand 2008-2018 Staff Revised Forecast*, CEC-200-2007-015-SF2, November 2007.

address a series of policy proposals to refine technical practices used to develop procurement plans, and consider other procedural matters. Any new policies, practices and procedures adopted in this proceeding will in turn be incorporated into the next cycle of LTPPs. The 2010 LTPP cycle, which will cover the 2011-2020 planning period, is anticipated to begin early 2009.

The Commission is cognizant that between now and late 2010, the IOUs' net short positions could deviate from the estimates upon which the 2006 LTPP authorizations were based. To the extent that additional procurement authority is needed to fill any identified widening gap within an IOU service territory, we leave open the possibility of granting interim procurement authority through a publicly vetted compliance update or by expediting the 2010 LTPP cycle if necessary, for example, to ensure procurement for a summer peak season that would have otherwise been missed under the revised LTPP schedule.

4. Goals of this Proceeding

The primary purpose of this rulemaking is to serve as the Commission's forum to integrate all procurement policies and related programs. It is an umbrella proceeding handling the procurement policy issues that do not warrant a separate rulemaking, and providing a place to integrate all of our ongoing efforts in the other procurement-related dockets, as referenced in Table 1. The outcomes of these issue-specific proceedings provide critical inputs to the LTPP proceeding in various ways.

Table 1 Procurement-Related Dockets

Docket	Proceeding Number(s)
1. Procurement	R.06-02-013 and its successor
2. Climate Change /Emissions	R.06-04-009

Docket	Proceeding Number(s)
Performance Standard	
3. Energy Efficiency	R.06-04-010 and its successor
4. Demand Response and Advanced Metering	A.05-06-006 et al., R.07-01-041 and its successor
5. Dynamic Pricing	A.06-03-005
6. Renewable Portfolio Standard	R.06-02-012, R.06-05-027 and successors
7. Avoided Cost and Qualifying Facility Pricing	R.04-04-025
8. Distributed Generation	R.06-03-004 and its successor
9. Transmission and Renewable Energy Transmission	I.05-09-005 and its successor
10. Confidentiality	R.05-06-040
11. Direct Access	R.07-05-025 and its successor
12. Community Choice Aggregation	R.03-10-003 and its successor
13. Resource Adequacy Requirements	R.05-12-013 and its successor
14. Planning Reserve Margin	Forthcoming rulemaking per Nov. 19, 2007 ACR of R.05-12-013
15. Liquefied Natural Gas	R.07-11-001
16. Other procurement-related Rulemakings not yet issued	

Consequently, the policies we will consider in this proceeding will address issues that impact one or more of five goals we have identified for the LTPP process as it relates to the other proceedings:

1. Ensure the IOUs' plans to meet their forecast load and balance the costs and benefits of various policy directives (*e.g.*, EAP, reliability);
2. Develop policies so that each IOU can meet its forecast load and obtain procurement authority for new and existing resources to meet system and bundled forecast load, with sufficient lead time to enable efficient procurement of new resources;
3. Coordinate between the various generation cost¹¹ policy proceedings (*e.g.*, EE, DR, renewable portfolio standards) and to ensure that they are consistent and coherent;
4. Establish procurement rules that (a) shall be followed to ensure recovery of generation costs¹² in rates and (b) address issues of regulatory and/or market failure related to generation issues; and
5. Serve as the forum for comparing resource alternatives against each other, in terms of uniform criteria such as cost, risk, reliability, and environmental impact, in order to optimize California's electric resource portfolio.

Further, the policies we focus on will be consistent with four guiding principles of the Commission's LTPP program oversight: (a) ensuring reliability, (b) ensuring the lowest reasonable rates by continuing to encourage the

¹¹ In this context, "generation cost" is used to mean energy/electric service that is not distribution or transmission.

¹² *Id.*

development of functional competitive markets, (c) adhering to the EAP loading order, and (d) anticipating AB 32 constraints on IOU electricity portfolios.

5. Interagency Considerations

The Commission established that LTPP would occur on a biennial basis in D.04-01-050, an approach adopted to ensure appropriate coordination with the CEC's IEPR proceeding.¹³

In the past few years, this Commission has encouraged the active participation of the CEC in its rulemaking endeavors on the decisionmaking side, rather than as party litigants. We invite the CEC to join us in this proceeding by continuing the collaborative approach that both agencies pursued in the development of procurement policy in R.05-12-013. The collaborative approach has been an effective tool to ensure that state agencies are able to communicate and effectuate their joint policy goals. At this point, we do not specify the details of the precise interagency working models that will prove to be most effective in this proceeding.

6. Preliminary Scoping Memo

In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding. Appendix A (Preliminary Scoping Memo) provides further guidance on each of the issue areas identified in this section.

As previously stated, the focus of this LTPP cycle is to consider various refinements to the policies, practices and procedures underlying the LTPPs themselves. We divide this proceeding to deal with issue areas in two phases.

¹³ D.04-01-050, at p. 175.

Phase I addresses issues that must be ruled on prior to the filing of the next round of LTPPs. Phase II will consider issues that are either (1) not time sensitive or (2) will not impact the structure or content of the next set of LTPPs, but will be needed prior to the design of any long-term requests for offers (RFOs) initiated pursuant to our approval of the next set of LTPPs.

Among the issues not considered in other procurement-related dockets (provided in Table 1) are several important issues that we will consider in this rulemaking. The primary sources of guidance on these issues are D.07-12-052 (and the R.06-02-013 record), the 2007 IEPR, and ongoing experience implementing the LTPP program. Accordingly, the Commission considers the following issues to be in scope in this proceeding:

Phase I:

- Standardized resource planning practices, assumptions and analytic techniques applied in long-term procurement plans, based on an integrated resource planning framework;
- Interim standards and practices to evaluate the uncertain cost of future GHG regulations during AB 32 implementation and in anticipation of possible federal legislation;
- Preparation of a report which provides specific information on each of the relevant programs either under the Commission's purview or funded by utility ratepayers that contribute to a reduction in GHG;¹⁴

¹⁴ On December 11, 2007, California Large Energy Consumers Association, The Utility Reform Network, Energy Producers and Users Coalition/Indicated Producers/Western States Petroleum Association and California Manufacturers & Technology Association (Joint Parties) filed a Motion for an Inventory of all Utility Ratepayer Funded Programs and all GHG Reduction Programs for the Electricity and Natural Gas Sectors. The

Footnote continued on next page

- A methodology to quantify EE in the CEC load forecast;
- Methodologies to estimate firm capacity from demand-side resources for long-term planning and procurement purposes;
- Customer risk preference study; and
- Other identified LTPP program implementation issues.

Phase II:

- Refinements to policies distinguishing system versus bundled resource needs, including a methodology that allocates the cost of new generation to system and bundled customers according to respective forecast load growth; and
- Evaluation of whether and how refinements can be made to the bid evaluation process to ensure fair competition between power purchase agreements and utility-owned generation bids.

We invite parties to comment on the issues we proposed for development in this OIR and following receipt of comments and the Prehearing Conference (PHC)/Workshop, the assigned Commissioner will add any additional issues that should properly be within the scope of this proceeding.

7. Limiting the Scope of Issues in the 2008 LTPP Proceeding

The Commission recognizes a tendency for the LTPP proceeding, as the umbrella proceeding, to attract “forum-shopping” proposals from parties that

motion was filed in R.07-09-008, R.06-04-009, and A.07-08-031. In response to the Motion, the Commission is directing parties in this 2008 OIR, the umbrella proceeding for procurement related issues, to produce such an inventory. Directives for compilation of the inventory are set forth in Appendix A, A.B., Phase I, Interim GHG Uncertainty Assessment.

have had their ideas rejected, or have yet to be considered, in other proceedings. Therefore, the Commission finds it necessary to adopt a scoping standard for the LTPP proceeding, in order to highlight what constitutes an issue that is legitimately in scope in this proceeding.

LTPP Scoping Standard. The LTPP scoping standard is defined as follows:

- Any procurement-related issue(s) not already considered in other procurement-related dockets, as outlined in Table 1 above, may be considered, subject to the following conditions. The issue(s) must:
 - (1) Materially impact procurement policies, practices and/or procedures;
 - (2) Be narrowly defined; and
 - (3) Demonstrate consistency with one or more of the LTPP proceeding goals described in Section 4 above.

The following issues *are not* in the scope of this proceeding:

- Development or litigation of the CEC load forecast, except as it pertains to the degree of overlap between the Commission's EE goals and the treatment of uncommitted EE in the CEC's load forecast;
- Implementation details related to AB 1576 and "preferential treatment" of Brownfield projects in RFOs for new generation; and
- Any matters proposed by parties that do not meet the scoping standard announced above, subject to ALJ or assigned Commissioner ruling.

8. Invitation to Comment on Preliminary Scoping Memo and Schedule

This OIR serves as a solicitation for parties to comment on the Preliminary Scoping Memo and Appendix A, and as an invitation to attend a Preliminary Scoping Memo workshop to be held at the PHC, on April 2, 2008, 10:00 a.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue,

San Francisco, California. Comments are due by March 17, 2008, and are limited to 15 pages of text. The Commission will utilize parties' pre-workshop comments and the workshop as a basis to identify areas that need clarification, and to consider additional items to be identified as "in-scope," pursuant to the guidance set forth in Sections 6 and 7 of this OIR. We direct parties to limit their comments to the specific issues and questions set forth in this OIR.

9. Category of Proceeding

The Commission's Rules of Practice and Procedure require that an OIR preliminarily determine the category of the proceeding and the need for hearing.¹⁵ As a preliminary matter, we determine that this proceeding is quasi-legislative and because the issues presented are largely policy, that evidentiary hearings (EH) may not be necessary. As with earlier procurement proceedings, many issues may lend themselves to resolution through a combination of workshops and formal comments.

10. Schedule

A PHC is set for April 2, 2008, 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. At the PHC, the parties should be prepared to discuss the issues addressed in this order, as well as any procurement-related policy proposals not ruled out of scope in this OIR. In lieu of PHC statements, we request comments on the Preliminary Scoping Memo and Appendix A contained herein by March 17, 2008.

Table 2 Preliminary Proceeding Schedule

Proceeding Milestone	Date
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¹⁵ Rule 6(c)(2).

Proceeding Milestone	Date
Comments due on Preliminary Scoping Memo	March 17, 2008
Prehearing Conference & Preliminary Scoping Memo Workshop	April 2, 2008
Revised Scoping Memo	To Be Determined
Phase I Issue Areas: <ul style="list-style-type: none"> • Straw Proposals, Comments, and/or Workshops • Interim Decisions, as Needed 	April 2008 or later
Proposed Decision on Phase I	November 2008
Phase II Issue Areas: <ul style="list-style-type: none"> • Straw Proposals, Comments, and/or Workshops • Interim Decision, as Needed 	July 2008 or later
Proposed Decision on Phase II	March 2009

Each of the issue areas outlined in the Preliminary Scoping Memo and Appendix A will likely require different types and degrees of public participation. Therefore, we defer further definition of procedure and schedule for each issue area until the Scoping Memo is issued, or after. We leave open the possibility that issue areas may be decided upon individually in interim decisions, if necessary.

This proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in Pub. Util. Code § 1701.5. In particular, it is our intention to resolve all relevant issues within 24 months of the date of the assigned Commissioner's Scoping Memo for each phase. In using the authority granted in § 1701.5(b) to set a time longer than 18 months, we consider the number and complexity of the tasks, the need to coordinate with other

proceedings, and the need to coordinate with the processes and role of the CEC and the California Independent System Operators.

11. Parties and Service List

A service list for this rulemaking will be established at the PHC. Electric corporations, energy service providers (ESPs), and community choice aggregators are named as respondents to this rulemaking, as set forth in Appendix B. We will also serve this order on publicly-owned LSEs, as set forth in Appendix C, and on those who are on the service lists for the procurement-related proceedings identified in Table 1 above.

Any person or representative of an entity interested in monitoring or participating in this rulemaking who does not make an appearance at the PHC should contact the process office by April 2, 2008: Commission's Process Office, 505 Van Ness Avenue, San Francisco, CA 94102 (or process@cpuc.ca.gov asking that his or her name be placed on the official service list for this proceeding. They must indicate whether they should be identified as an "intervenor," "information only," or "state service," and provide their name, address, organization represented, telephone number and e-mail address. The service list will be posted on the Commission's web site, www.cpuc.ca.gov, following the PHC.

The Commission has previously noted that the CEC played an important role in the design, implementation, and ongoing operation and Resource Adequacy (RA) programs. We invite the CEC to join us in this proceeding by continuing the successful collaborative approach that both agencies pursued in earlier RA proceedings.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public

Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

The Commission adopted rules for the electronic service of documents related to its proceedings. Rule 2.3.1 of the Rules of Practice and Procedure may be viewed at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/46095-02.htm#P341_33469. All parties shall comply with the requirements of this rule.

12. Ex Parte Communications

This quasi-legislative proceeding does not have any *ex parte* restrictions or reporting requirements pursuant to Rule 8.2(a).

Therefore, **IT IS ORDERED** that:

1. The Commission institutes this rulemaking on its own motion to continue its efforts to ensure reliable and cost-effective electricity supply in California through integration and refinement of a comprehensive set of procurement policies and review of long-term procurement plans.

2. The load-serving entities named in Appendix B are respondents to this proceeding. Any respondent energy service provider whose registration is cancelled shall, upon confirmation of the Energy Division, cease to be a respondent.

3. This is the successor proceeding to the Commission's procurement rulemaking, Rulemaking (R.) 06-02-013, with respect to long-term procurement plans (LTTPs) and the record developed in that proceeding as to procurement policies and plans is fully available for consideration in this proceeding.

4. The Executive Director shall cause this Order Instituting Rulemaking to be served on Respondents, the California Energy Commission, the California Independent System Operator, publicly-owned LSEs, and other entities listed in

Appendix C, and all parties to R.06-02-013, R.05-12-013, R.03-10-003, R.04-04-025, I.05-09-005, R.05-06-040, R.06-04-010, R.06-04-009, Application (A.) 05-06-006, R.07-01-041, A.06-03-005, R.06-05-027, R.06-03-004, and R.07-05-025, R.07-11-001.

5. A prehearing conference (PHC) is scheduled for April 2, 2008, 10:00 a.m., to be followed by a workshop, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. A service list will be established at that time.

6. Comments on the Preliminary Scoping Memo and Schedule, and Appendix A, shall be filed by March 17, 2008, and are limited to 15 pages of text.

7. Any person or representative of an entity interested in monitoring or participating in this proceeding that does not make an appearance at the PHC shall send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, CA 94102 (or process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding.

8. The category of this rulemaking is preliminarily determined to be quasi-legislative.

9. The assigned Commissioner or the ALJ may make any revisions to the scheduling and filing determinations made herein as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated _____, at San Francisco, California.