

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 6, 2006

Agenda ID # 5335

TO: PARTIES OF RECORD IN RULEMAKING 01-10-024

This is the draft decision of Administrative Law Judge (ALJ) Walwyn. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:niz

Attachment

Decision **DRAFT DECISION OF ALJ WALWYN** (Mailed 2/6/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**OPINION ADDRESSING PETITIONS TO MODIFY
DECISION (D.) 02-10-062, D.03-06-076, D.03-12-062, AND D.04-01-050**

1. Summary

This decision addresses seven petitions to modify (petitions) filed in this proceeding between December 2003 and May 2004 by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Sempra Energy Resources (SER). We find here that two of the petitions were already addressed through applications for rehearing and the other five are either moot because they seek changes to short-term procurement plans that have expired or they address policy issues that are better considered in other proceedings. Therefore, we deny each petition.¹

¹ While the Commission has previously addressed all other petitions filed in this proceeding, this decision does not close the proceeding. A rehearing on D.04-06-011, SDG&E's Otay Mesa power purchase agreement, is open. A proposed decision on this matter is Item 35 on the Commission's January 26, 2006 agenda.

2. Procedural Background

On October 25, 2001, the Commission opened this proceeding to establish the necessary operating procedures and ratemaking mechanisms for California's three largest electric utilities, PG&E, Edison, and SDG&E, to resume full procurement responsibilities by January 1, 2003. As part of the regulatory framework we established, we adopted short-term, and later long-term, procurement plans for each utility.

The petitions here request modifications to four decisions: D.02-10-062, D.03-06-076, D.03-12-062, and D.04-01-050. The first two decisions involve the 2003 procurement plans and the third and fourth decisions adopt the 2004 procurement plans and a longer term procurement framework.²

In April 2004, the Commission opened a new procurement rulemaking, R.04-04-003, to address on-going procurement issues and to serve as an "umbrella" proceeding to coordinate and incorporate Commission efforts in separate proceedings on community choice aggregation, demand response, distributed generation, energy efficiency, qualifying facilities, renewable portfolio standards, and transmission assessment and planning. As part of R.04-04-003, the Commission in D.04-12-048 gave the utilities authority to plan for and procure resources for the planning period 2005 through 2014, in concert with policies articulated in the resource adequacy phase of the proceeding.

² D.02-10-062 adopted the initial regulatory framework under which the utilities would resume full procurement and required the utilities to file updated 2003 procurement plans, which were approved in D.02-12-074. D.03-06-076 modified D.02-10-062 and D.02-12-074 in response to applications for rehearing and denied rehearing. D.03-12-062 addressed the majority of 2004 short-term procurement issues. D.04-01-050 addressed the remainder of 2004 short-term procurement issues and adopted the first long-term procurement framework.

A third procurement rulemaking, to carry forward from R.04-04-003, is scheduled for the Commission's consideration in early 2006.

3. Discussion of Petitions

a. Edison's February 19, 2004 Petition to Modify D.03-12-062

Edison's petition seeks modification to its 2004 procurement plan, as follows:

- (1) Establish a specific time for issuing a resolution for approval of the utilities' quarterly compliance filings;
- (2) State specifically that the target guideline for spot market procurement does not apply to procurement of capacity to meet operating reserve requirements;
- (3) Delete language which could be interpreted to allow the California Department of Water Resources (DWR) to perform "after the fact reasonableness reviews";
- (4) Change language which requires the utilities to consult with their procurement review group (PRG) for transactions greater than 90 days;
- (5) Modify language which directs Edison to assume a "pro rata" allocation of DWR costs;
- (6) Allow the utilities to enter into contracts of up to five years in length where delivery begins in 2004 or later and termination occurs prior to 2009;
- (7) Modify language which would require only an "unqualified certification" as a basis for authorizing Edison's proprietary risk model;
- (8) Modify language which restricts bilateral transactions to less than one calendar quarter in length and clarify that the term "less than 90 days forward" refers to the start date of the transaction;

- (9) Eliminate the requirement that Edison demonstrate that identified over-the-counter brokers provide prices equivalent to those of exchanges;
- (10) Clarify how to measure the level of variance which triggers a PRG meeting;
- (11) Delete the sentence which states that a utility should not arbitrage in energy markets; and
- (12) Clarify that Edison's compliance filing is due at the same time as PG&E's and SDG&E's compliance filings.

In comments on the petition, PG&E and SDG&E support Edison's request, with PG&E requesting additional language changes to (6) above. DWR filed a memo opposing requests (1), (2), and (5). The Division of Ratepayer Advocates (DRA) opposes (1) and (7), partially supports (2), (9), and (10), and supports the other requested changes.

We find that Edison's requests are moot due to the expiration of its 2004 short-term procurement plan. Any requirements that have carried forward to later plans should be addressed in the upcoming new rulemaking proceeding. Therefore, we deny the petition.

**b. SER's February 10, 2004 Petition to Modify
D.04-01-050**

In its petition, SER requests the Commission modify and/or clarify its affiliate-transaction ban in order for SER's affiliate, SDG&E, to avail itself of SER's generation resources. SER requests the Commission consider one of four alternatives:

- Eliminate the affiliate-transactions ban;
- Modify the affiliate-transactions ban to provide an exemption for affiliate transactions the utilities believe can be justified;
- Modify the ban to extend the exemption to all existing generating plants;

- At a minimum, clarify that the ban does not extend to gas-related transactions unrelated to electric-generation fuel.

Comments opposing the petition were filed by The Utility Reform Network and Utility Consumers' Action Network.

On July 8, 2004, in D.04-07-037, the Commission upheld its ban on procurement transactions with affiliates. This decision addressed SDG&E's application for rehearing on the affiliate-transaction ban and the composition of SDG&E's procurement risk committee. In its decision, the Commission found that before any changes to the affiliate-transaction ban could be considered, more information is needed for us to evaluate the potential for conflicts of interest in SDG&E's procurement transactions; the decision cites to the audit ordered in D.04-01-050 as the vehicle whereby the Commission can obtain the necessary information. Until that audit has been completed and evaluated, we should not consider modification to the affiliate-transactions ban. Therefore, we deny the petition.

c. SDG&E's February 20, 2004 Petition to Modify D.04-01-050

In its petition, SDG&E seeks modification to the discussion and conclusions regarding its procurement risk committee. On February 25, 2004, SDG&E filed an application for rehearing on D.04-01-050, raising the same issues.

In D.04-07-037, the Commission addressed SDG&E's application for rehearing, stating that "SDG&E has failed to grasp the nature of our concerns about potential conflicts of interest in SDG&E's procurement transactions." The decision corrects one factual error raised by SDG&E, but notes that SDG&E's clarification does not obviate the concerns expressed in D.04-01-050. The discussion concludes that when the audit ordered in D.04-01-050 is completed, it

will provide the information necessary to evaluate whether the current structure and conditions are effective in preventing conflicts of interest and cross-subsidization in SDG&E's procurement. (See D.04-07-037, pages 11-13.)

The issues raised in SDG&E's petition have already been addressed in D.04-07-037. Therefore, the petition is denied.

d. PG&E's February 20, 2004 Petition to Modify D.03-12-062

In its petition, PG&E requests two modifications to D.03-12-062: (1) that the Commission clarify that for purposes of upfront standards, "short term" means up to and including 3 calendar months, or one quarter, not "90 days"; and (2) a finding that competitive solicitations include those conducted by electronic auction. The only party filing comments, DRA, agrees with the short term definition but opposes PG&E's electronic auction authority proposal because it does not contain sufficient details.

We find that PG&E's requests are moot due to the expiration of its 2004 short-term procurement plan. Any requirements that have carried forward to later plans should be modified in the current procurement proceeding or addressed to the Commission in the upcoming new rulemaking. Therefore, we deny the petition.

e. Edison's February 23, 2004 Petition to Modify D.03-06-076

Edison seeks to modify the Commission's decision on the applications for rehearing of D.02-10-062 and D.02-12-074. It requests that the Commission allow recovery of its administration and system costs associated with administering procurement contracts in its Energy Resource Recovery Account (ERRA) annual reasonableness review filings on an interim basis pending the Commission's

decision in its test-year 2006 general rate case (GRC) filing. No parties filed comments.

A decision in Edison's 2006 GRC proceeding, Application (A.) 04-12-014, is expected to be made in early 2006, probably before its next ERRA filing. Edison did not seek this relief in its 2004 or 2005 procurement plans. We should deny the petition as the relief requested is better addressed in A.04-12-014.

**f. Edison's March 16, 2004 Petition to Modify
D.04-01-050**

Edison requests that we modify the decision to clarify that Qualifying Facilities (QF) contract extensions under D.03-12-062 and D.04-01-050 are limited to a total of five years. The Cogeneration Association of California (CAC) and Energy Producers and Users Coalition (EPUC) oppose Edison's request, stating there is no basis in the record for this modification and citing to language in both D.03-12-062 and D.04-01-050 that establishes the Commission's intent as different than Edison's characterization.

We agree with CAC/EPUC that there is no basis in the record to support Edison's request and the petition is wrong on the merits. Therefore, we deny the petition.

**g. PG&E's March 26, 2004 Petition to Modify
D.04-01-050**

In its petition, PG&E requests the Commission:

- (1) Clarify language on the 90% level of forward contracting;
- (2) Modify Conclusion of Law 15 on non-unit contingent contracts to be consistent with the discussion language;
- (3) Find that any change in the Short-run Avoided Cost methodology would apply to the new Standard Offer 1 agreements, whether or not the Commission adopts a

revised QF pricing policy at any time prior to December 31, 2005;

- (4) Change the finding that QF payments made pursuant to 5-year agreements are not subject to the Public Utility Regulatory Policy Act of 1978;
- (5) Authorize the utilities to operate until December 31, 2008 under their short-term plans and provide that the plans may be periodically reviewed or prospectively modified by Advice Letter.

Comments in opposition to PG&E's proposed changes to QF language were filed by CAC/EPUC, the California Cogeneration Council, and the Independent Energy Producers.

We find that the changes requested here are policy issues that the Commission is addressing in the current procurement proceedings. Therefore, we should deny this petition without prejudice.

4. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Christine M. Walwyn is the assigned Administrative Law Judge (ALJ) in this proceeding.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. The modifications requested by Edison in its February 19, 2004 petition to modify D.03-12-062 are moot due to the expiration of its 2004 short-term procurement plan. Any requirements that have carried forward to later plans should be addressed in the new procurement rulemaking proceeding.

2. The modifications requested by SER in its February 10, 2004 petition to modify D.04-01-050 should not be considered until after the audit ordered in D.04-01-050 has been completed and evaluated.

3. The issues raised in SDG&E's February 20, 2004 petition to modify D.04-01-050 have already been addressed by the Commission in D.04-07-037.

4. The modifications requested by PG&E in its February 20, 2004 petition to modify D.03-12-062 are moot due to the expiration of its 2004 procurement plan.

5. The modification requested by Edison in its February 23, 2004 petition to modify D.03-06-076 is better addressed in A.04-12-014.

6. There is no basis in the record to support the modifications requested by Edison in its March 16, 2004 petition to modify D.04-01-050.

7. The modifications requested by PG&E in its March 26, 2004 petition to modify D.04-01-050 are policy issues that the Commission is addressing in other proceedings.

Conclusions of Law

1. Edison's February 19, 2004 petition to modify D.03-12-062 should be denied because it is moot due to the expiration of its 2004 short-term procurement plan.

2. SER's February 10, 2004 petition to modify D.04-01-050 should be denied because it is premature.

3. SDG&E's February 20, 2004 petition to modify D.04-01-050 should be denied because the issues have been previously addressed.

4. PG&E's February 20, 2004 petition to modify D.03-12-062 should be denied because it is moot due to the expiration of its 2004 short-term procurement plan.

5. Edison's February 23, 2004 petition to modify D.03-06-076 should be denied because it is wrong on the merits.

6. Edison's March 16, 2004 petition to modify D.04-01-050 should be denied pursuant to Finding of Fact 6.

7. PG&E's March 26, 2004 petition to modify D.04-01-050 should be denied without prejudice because these issues are being addressed in other proceedings.

8. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (Edison) February 19, 2004 petition to modify Decision (D.) 03-12-062 is denied.

2. Sempra Energy Resources' February 10, 2004 petition to modify D.04-01-050 is denied.

3. San Diego Gas & Electric Company's February 20, 2004 petition to modify D.04-01-050 is denied.

4. Pacific Gas and Electric Company's (PG&E) February 20, 2004 petition to modify D.03-12-062 is denied.

5. Edison's February 23, 2004 petition to modify D.03-06-076 is denied.

6. Edison's March 16, 2004 petition to modify D.04-01-050 is denied.

7. PG&E's March 26, 2004 petition to modify D.04-01-050 is denied.

This order is effective today.

Dated _____, at San Francisco, California.