

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

FILED
PUBLIC UTILITIES COMMISSION
APRIL 1, 2004
SAN FRANCISCO, CALIFORNIA
RULEMAKING 04-04-003

ORDER INSTITUTING RULEMAKING**I. Summary**

We open this rulemaking to adopt long-term resource plans for electric utilities and to continue our ongoing efforts to promote policy and program coordination and integration in electric utility resource planning. We will ensure that the utilities have available the broadest range of appropriate resources – utility-owned power plants, energy efficiency, contracted power, demand response, qualifying facilities, renewable generation, and distributed generation – in a regulatory environment that exhibits as much certainty as we can provide. This is the successor to Rulemaking (R.) 01-10-024,¹ and it will be the forum in which we consider, in a coordinated and integrated fashion, the key policies and programs which underlie our review of the investor owned utilities' (IOUs) long-term procurement plans.

In this proceeding, the three major electric IOUs, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San

¹ *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development*, issued October 29, 2001.

Diego Gas & Electric Company (SDG&E), hereinafter referred to collectively as “utilities” or “respondents,” will submit their long-term procurement policies and plans for review and approval. Our review of these plans will be guided by our prior decisions in R.01-10-024 as well as the statewide Energy Action Plan (EAP) adopted in 2003 by this Commission, the California Energy Commission (CEC) and the California Consumer Power and Conservation Financing Authority (CPA).² Our goal in this proceeding, as in the EAP, is to take all necessary steps to “ensure that adequate, reliable, and reasonably-priced electrical power and natural gas³ supplies, including prudent reserves, are achieved and provided through policies, strategies, and actions that are cost-effective and environmentally sound for California’s consumers and taxpayers.” (Energy Action Plan, p. 2.)

In addition, we will use this proceeding to coordinate formally our consideration of these long-term plans with other efforts ongoing in the following dockets:

1. Community Choice Aggregation, R.03-10-003;
2. Demand Response, R.02-06-001;
3. Distributed Generation R.04-03-017;
4. Energy Efficiency, R.01-08-028;

² *Energy Action Plan*, adopted April 18, 2003 by the CPA; April 30, 2003 by the CEC; and May 8, 2003 by the CPUC. A copy of the Energy Action Plan is available at www.cpuc.ca.gov/static/industry/electric/energy+action+plan/index.htm.

³ This proceeding will not address natural gas supply issues which are the subject of another proceeding, R.04-01-025, issued January 22, 2004. The Commission will closely coordinate this OIR and R.04-01-025. In particular, we recognize that our consideration of procurement incentives in this rulemaking must remain closely coordinated with our consideration of new rulemaking policies for natural gas procurement.

5. Avoided Cost and Qualifying Facility (QF) Pricing (rulemaking to be issued shortly);
6. Renewable Portfolio Standards (rulemaking to be issued shortly);
7. Transmission Assessment Process, R.04-01-026; and
8. Transmission Planning, I.00-11-001.

The eight proceedings listed above are, to one extent or another, resource specific in their focus on program details, implementation, monitoring and evaluation, and associated matters. As discussed in more detail below, our use of this proceeding as a case management “umbrella” is designed to ensure policy consistency, cohesiveness, and overall coordinated review of the long-term procurement plans in conjunction with these related working dockets.

We invite the participation of all parties who are interested in these efforts, including those who have actively participated in R.01-10-024. This will be an interagency undertaking as well, and as more thoroughly discussed below, we invite the CEC, the CPA and the Independent System Operator (ISO) to join with this Commission as it considers the long-term plans, including underlying resource adequacy and incentives issues.

II. The Goals of this Proceeding

In Decision (D.) 04-01-050, we adopted the long-term regulatory framework under which respondents will plan for and procure energy resources and demand-side investments, and indicated that this successor OIR would consider the following specific issues:⁴

⁴ D.04-01-050, *mimeo.*, pp. 4, 181.

1. Review and adoption of long-term procurement plans for the three utilities;
2. Resource adequacy issues not otherwise addressed in workshops;
3. Treatment of confidential information;
4. The development of procurement incentives for each utility;
5. The development of a long-term policy for expiring QF contracts; and
6. Review of the management audits of SDG&E's and PG&E's electric procurement transactions with affiliates.

We will fully consider all six issues, but our review and adoption of the utilities' long-term procurement plans will be the centerpiece of this proceeding. We place the parties on notice that our prior decisions in R.01-10-024 and the EAP will guide our review of the long-term plans, and stress that this has specific consequences for the conduct of this proceeding. We are also cognizant that discussions in other contexts of the continuing status of direct access and/or introduction of a core/non-core retail electric market structure will also have a profound effect on the nature of the utilities' long-term procurement plans. In D.04-01-050, we required the utilities to include core/non-core as one planning scenario, which will inform our decisionmaking here.

In addition, until we issue a separate rulemaking on avoided cost issues, this proceeding will serve as the forum for coordinating the Commission's development of avoided costs across the various resource-related proceedings. Our goal is to ensure that the data inputs and methodologies used in calculating avoided costs are consistent across the various resource applications, where appropriate.

Using the EAP as one of our primary guideposts in this proceeding reinforces our commitment to coordinate with the CEC and CPA in our

decisionmaking efforts (much as we have in recent rulemaking dockets like R.02-06-001 and R.99-10-025). Under the EAP we are actively cooperating with these other energy agencies and have pledged to "...discuss critical energy issues jointly through open meetings and ongoing informal communication; to share information and analysis to minimize duplication, maximize a common understanding and ensure a broad basis for decision making."⁵

We will also redouble our efforts to ensure effective internal coordination of issues among a number of ongoing proceedings. To meet the latter goal, we will use case management tools designed to facilitate active coordination of issues between and among the resource-specific proceedings implicated by our review of the long-term procurement plans.

We are committed to our agreement in the EAP that

"...agencies and state policy makers need to respond by carefully considering available options, balancing costs and benefits to meet state goals, selecting policy choices, and devising actions to meet those policy choices. The result must be a set of interrelated actions that complement each other, provide risk protection, and eliminate the costs and conflicts that would occur if each agency pursued isolated, uncoordinated objectives. Each agency will need to implement the action plan in its individual proceedings but in concert with each other." (EAP, p. 3.)

In this particular proceeding, we will work in concert with our sister agencies to review the utilities' long-term procurement plans, including related resource adequacy and incentive issues.

⁵ EAP, p. 2.

We also invite the active participation of the ISO in this proceeding, particularly to help us ensure coordination of transmission-related issues, as well as resource adequacy issues.

The EAP envisions a loading order of energy resources:

- First seek to optimize all strategies to increase conservation and energy efficiency in order to minimize increases in electricity and natural gas demand.
- Then, meet demand for new generation with renewable energy resources and distributed generation.
- Then because preferred resources require both sufficient investment and adequate time to “get to scale,” the EAP supports additional clean, fossil fuel, central-station generation.
- Finally, the EAP intends to improve the bulk electricity transmission grid and distribution facility infrastructure to support growing demand centers and the interconnection of new generation.

This loading order is the standard against which the long-term plans will be considered, but it does not preclude us from considering other options, particularly redevelopment of existing facilities, to the extent new generation resources are required.⁶

⁶ In D.04-01-050, we provided further direction that, to the extent new generation resources are required, the utilities should first consider the overall advantages of redeveloping existing plants or facilities, or of developing brown field sites located close to load, rather than developing new green-field sites remote from load and requiring substantial transmission and other system upgrades. “We prefer that generation assets be sited in California and that they minimize the overall economic and environmental impact, including the costs of transmission and power losses.” D.04-01-050, *mimeo.*, pp. 52-53. We welcome the opportunity to review such proposals.

A. Interagency Considerations

In the past two years in selected proceedings, this Commission has encouraged the active participation of the CEC and the CPA in its rulemaking endeavors on the decisionmaking side, rather than as party litigants. Such efforts have included holding joint prehearing conferences and working group meetings presided over by Commissioners from all three agencies, with support of interagency advisory staff teams.⁷ This has been an effective tool to ensure that involved state agencies are able to communicate their joint policy goals to the parties at regular intervals during the course of the proceeding. In this manner the agencies can control their common policy agenda more directly, while at the same time communicating actively with the parties who must implement statewide agency policy at the ground level. In recent rulemakings we have also used working groups and technical workshops facilitated by interagency staff designed to develop actual program details.⁸

In reviewing the long-term procurement plans (as well as related resource adequacy and incentive mechanism issues), we will use interagency working groups in support of our common decisionmaking endeavors. At this point, it is too early to specify the details of the precise interagency working models that will prove to be most effective in this proceeding. However, the assigned Commissioner and assigned administrative law judge (ALJ) will work together to develop the necessary interagency working models that will support successful decisionmaking here. Parties may wish to comment on the pluses and

⁷ For example, R.02-06-001, our demand response rulemaking.

⁸ *Id.*

minuses of various interagency models used by this Commission in prior rulemaking efforts, and they may do so in prehearing conference statements. While the parties' input may be very useful, the Commission and the involved agencies must be the final arbiters of how they wish to structure working groups supporting their common decisionmaking tasks.

B. Case Management Issues

We have explicitly recognized that the utilities' procurement plans bring together, in an integrated resource planning framework, the policies developed in dockets dealing with specific types of resources, such as energy efficiency, renewables, demand response, and distributed generation.⁹ We will also be developing avoided costs for a variety of resource-related applications, including, but not limited to, energy efficiency program evaluations, the ranking of bids under the Renewables Portfolio Standard (RPS) and for bids other than RPS for energy procurement. Although there may be legitimate reasons for differences in avoided cost calculations depending upon the application, we need to ensure consistency in those calculations where appropriate. This underscores the need to coordinate the development of programs and policies in these other resource-specific dockets with our review of the utilities' long-term procurement plans, including our consideration of resource adequacy issues and development of incentive mechanisms.

⁹ D.04-01-050, *mimeo.*, pp. 6-7.

We will use this proceeding as a vehicle to coordinate ongoing record building in eight other matters:

1. Community Choice Aggregation (R.03-10-003);
2. Demand Response (R.02-06-001);
3. Distributed Generation (R.04-03-017);
4. Energy Efficiency (R.01-08-028);
5. Avoided Costs and QF Pricing (Rulemaking to be issued shortly);
6. Renewables Portfolio Standard (new rulemaking to be issued shortly);
7. Transmission Assessment Process (R.04-01-026); and
8. Transmission Planning (I.00-11-001).

While coordinating these matters, we do not intend to formally consolidate them for any purpose at this time. By coordinating them, we intend to facilitate the exchange of information among and between parties and decision makers in these proceedings (all of which are at different stages), avoid duplicative or unnecessary record building among the various proceedings, and promote consistent and optimal decisionmaking outcomes. Such coordination can take many forms. Rather than prescribe these forms today, we believe the better course is to leave many of the details to those on the decisionmaking side of this rulemaking, most particularly the assigned commissioner and assigned ALJ, who are in a better position to develop the necessary tools once they have had the opportunity to assess the situation more thoroughly.

At this point we can state unequivocally that we intend to use this forum as the case management “umbrella” over the other eight resource-specific proceedings. To that end, the ALJ assigned to this proceeding will convene, on a schedule the ALJ deems reasonable, periodic Case Management Conferences (CMCs) (which will be formally noticed) involving some or all (as appropriate) of

these eight coordinated resource-specific dockets. The overall purpose of each such CMC will be issues and case coordination, as necessary to facilitate the consideration of the utilities' long term procurement plans. We envision such CMCs will include the ALJs and Commissioners assigned to the resource-specific proceedings noticed for the CMC, as well as all interested parties. The ALJ assigned to this proceeding will preside over the CMC, in collaboration with the ALJs assigned to the other proceedings included in the particular CMC. The presiding ALJ, in coordination with the other involved ALJs and decision makers, will prepare an agenda for each CMC, and will work with other decision makers to memorialize the outcomes of the CMC, as appropriate.

III. 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. Principally, this rulemaking is the forum for review and adoption of the respondents' long-term procurement plans. It is also the forum for our review of procurement incentives; long-term policy issues surrounding expiration of QF contracts; the management audits of SDG&E's and PG&E's electric procurement transactions with affiliates; resource adequacy issues not otherwise addressed in workshops; and the treatment of confidential information.

A. Review and Adoption of Long-Term Procurement Plans

The review and adoption of revised 2004 long-term procurement plans for the utilities is the prime focus of this proceeding. D.04-01-050 was comprehensive in providing guidance to the utilities about the required

parameters of these plans, in terms of load scenarios, portfolio choice issues, and cost level issues.¹⁰

Consistent with all requirements set forth in D.04-01-050, we required the utilities to file a working outline of their long-term plans, including the level of detail and specific scenarios prescribed in that decision and in its ordering paragraphs, the means by which the utilities will incorporate the resource adequacy framework developed in the technical workshops (discussed below), and a showing that the material provided in the public filing will allow for meaningful participation by all parties. In January 2004, in D.04-01-050, we announced that these filings should be made at the end of March 2004, and that interested party comments on the outlines should be due by mid-April, although the precise dates were to be announced via ALJ Ruling. That ruling has now been issued, and the utilities' working outlines and interested parties' written comments will be available to us as we commence this new proceeding.

In D.04-01-050, we acknowledged that our efforts to-date are only initial steps on the road to developing integrated resource plans. We said that, while "this process has been consistent with our statewide goals for energy efficiency and renewables, it does not end our efforts to promote better-informed, more accountable utility planning. The integrated resource planning we seek to achieve would provide a comprehensive context for all of a utility's resource decisions and would include the following features:

1. Rather than considering projected load and resource needs only on a statewide or service territory scale, each utility would assess the different characteristics of the many planning areas

¹⁰ D.04-01-050, *mimeo.*, pp. 90- 100.

within its service area – taking into account the nature of local customer load (such as specific industries, the residential mix, and related load profiles), transmission and distribution constraints, existing generation resources, land use concerns and community values.

“2. Each utility would develop a base plan that would take into account least-cost resources, reliability needs, fuel diversity, and other risk management concerns. On the local level, the utility would determine the optimal way to meet demand (whether it would be through energy efficiency, demand reduction, transmission or distribution additions, distributed generation, renewables, or fossil generation).

“3. On a service territory-wide basis, the utility would then determine whether the optimal local solution adequately supports total resource needs and the achievement of the state’s policy preference for energy efficiency and renewables, and adjust the plan as needed to serve those broader needs.

“By relying on such a bottom-up approach, the utility would be able to understand the implications of its planning decisions. The Commission and utilities would be able ensure that state policies are implemented in a manner designed to contain cost while achieving other goals. Such a process is not merely consistent with the state’s broader policy goals – it will help sustain them.

“We encourage the utilities to begin designing and creating the internal processes necessary to support this type of analysis and will further explore its implementation in our new long-term procurement proceeding.” (D.04-01-050, *mimeo.*, pp. 96-97.) (Emphasis added.)

In this proceeding, we will work to further these goals in several ways. First, in reviewing the forthcoming long-term plans, we will assess the extent to which the utility plans already reflect this approach. Second, we will seek

reports from the utilities on their plans to implement this directive. Third, we will develop further guidance as needed, through workshops and comments in this docket. The assigned ALJ will establish procedures and a schedule for these activities.

In D.04-01-050, we stated that we would review the revised long-term procurement plans through a full evidentiary process that will conclude with a final Commission decision. As the first step in that process, we schedule on April 30, 2004, the “early status check” prehearing conference (PHC) referred to in D.04-01-050. At that PHC, the parties should be prepared to discuss the issues addressed in this order, as well as any issues raised in their PHC statements filed in advance of the PHC, including their proposed schedules and critical-path timetables.

**B. Review of Resource Adequacy Issues Not
Otherwise Addressed in Workshops**

In D.04-01-050, we directed that workshops address certain technical issues related to resource adequacy that are critical to our review of the utilities’ long-term procurement plans. The focus of the resource adequacy workshops is on developing clear standards and guidelines for forecasting load and counting resources to allow a determination that each load-serving entity has met the requirement that it has forward contracts or other resources, at least one year in advance, to serve 90% of its peak summer load. The workshops will allow us to assess the possibility for consensus on the necessary standards and guidelines, work towards consensus where possible, and where consensus is not possible, bring the issues to the Commission for decision in this proceeding. The guidelines and standards for forecasting and counting resources adopted as a result of the efforts in the resource adequacy workshops should be applied

consistently in determining resource adequacy and in the long-term procurement plan filings. We have previously concluded, and affirm here, that resource adequacy is not merely an issue for the utilities. Electric Service Providers (ESPs) are load-serving entities, and they should have an obligation to acquire sufficient resources for their customer load.¹¹

At a timely point in this proceeding, we expect to provide guidance to the parties further refining the resource adequacy issues identified above, as they bear on the long-term procurement plans.

There are other issues currently being discussed in the resource adequacy workshops (in R.01-10-024) that may not be critical for evaluating the long-term procurement plans. For example, the process for assessing compliance with resource adequacy requirements may not require resolution for us to evaluate the long-term procurement plans. We will continue to explore those issues and work towards their successful resolution in an ongoing workshop process which will occur in this proceeding, rather than keeping R.01-10-024 open for that purpose.

C. Treatment of Confidential Information

In this proceeding, we will revisit our approach to confidentiality of information submitted in support of procurement-related filings. In D.04-01-050, we indicated our intent to expand the scope of utility planning data that is made public during the procurement process and our intent to revise the review procedures for new utility projects and power purchase agreements brought before us for pre approval – all with a view to significantly opening the process.

¹¹ D.04-01-050, Ordering Paragraph 2, *mimeo.*, p. 199.

We stated that the breadth of the redactions we have seen in utility filings is incompatible with open decisionmaking and indicated that we are committed to balancing effectively any inherent tension between open decisionmaking and the protection of legitimately confidential information while ensuring a more public process.

In D.04-01-050, we specified that all product, price and availability information contained in the utilities' procurement-related applications submitted for our approval must be public information to the extent possible and not subject to confidentiality protections in the absence of a convincing showing that public release will harm ratepayer interests. We ordered parties to submit comments on the issues of whether and how California ratepayers would be harmed as a result of our making public all product, price, and other information contained in the utilities' procurement-related applications.¹² We also required the parties to address whether and how ratepayers would be harmed by requiring quarterly procurement transaction compliance filings to be submitted as public information not subject to confidentiality protections. These comments were filed on March 1, 2004, and as specified in D.04-01-050, they will be fully considered in this docket, rather than R.01-10-024. Very shortly, the Commission will provide further direction to the parties on these issues.

D. The Development of Procurement Incentives

In D.02-10-062, we expressed our preference to adopt a uniform incentive mechanism to provide an opportunity for utilities to balance risk and reward in the long-term procurement process. In 2003, in coordination with

¹² D.04-01-050, *mimeo.*, pp. 179-180.

other utilities, SDG&E sponsored an all-party workshop designed to develop a procurement-related incentive mechanism proposal, but this ambitious effort did not result in a consensus for uniform incentives. Rather than chart a course that would lead us away from a uniform incentive mechanism, our preferred outcome, we explicitly restated that preference in both D.03-12-062 and D.04-01-050 and identified this rulemaking as the forum for developing an “integrated incentive mechanism that rewards utilities for proper balancing of preferred resources, as identified in the Energy Action Plan ‘loading order’ as well as D.02-10-062.”¹³ Today, we clarify how we intend to develop this overall incentive mechanism in close coordination with the other resource-specific proceedings identified in this order.

The goal of this effort is to motivate the IOUs to procure least-cost supply-side resources and make cost-effective demand-side investments, taking into account the environmental costs (or benefits) of various resource options. Our challenge will be to create an overall procurement incentive framework that aligns the interests of utility investors, management and ratepayers such that the proper balancing of these preferred resources occurs in the procurement of power from existing and new resources.

We believe that a workshop process is the best forum for encouraging productive dialogue among interested parties on this issue and, in turn, informing the Commission. To facilitate this process, we attach a concept paper prepared by Commission staff that outlines an incentive framework for utility procurement modeled after the cap-and-trade principles of the Sky Trust

¹³ D.04-01-050, *mimeo.*, p. 163.

(Attachment B). It is intended to illustrate one approach to procurement incentives to initiate the workshop discussions. The assigned ALJ will issue a ruling soliciting pre-workshop comments and scheduling a series of workshops on the topic of procurement incentives, at which the proposal described in the attached concept paper and other alternatives can be explored. We recognize the need to coordinate our consideration of procurement incentives in this proceeding with our consideration of new ratemaking policies for natural gas procurement.¹⁴ Accordingly, the assigned ALJ shall notice all parties in R.04-01-025 when soliciting comments on Attachment B and scheduling workshops on the issue of procurement incentives.

As discussed in D.03-12-062 and D.04-01-050, any incentive mechanisms being considered in resource-specific proceedings (e.g., energy efficiency) must be consistent with the overall procurement incentive framework we adopt in this proceeding.¹⁵ Accordingly, we intend to adopt an overall framework for procurement incentives *before* we make our final determinations on resource-specific incentive mechanisms. Nonetheless, some work on resource-specific mechanisms may proceed concurrently, since several key aspects of those mechanisms (e.g., performance basis and measurement protocols for energy efficiency) will need to be developed irrespective of the overall procurement incentive structure. We will also consider, on a case-by-case basis, issuing interim decisions in resource-specific proceedings on aspects of incentive

¹⁴ See R.04-01-025, pp. 22-23.

¹⁵ See D.03-12-062, pp. 70-71; D.04-01-050, pp. 163-165.

design, as long as doing so will not prejudice our determinations in this proceeding.

In sum, the initial focus of our efforts on performance incentives will be to establish an overall procurement incentive framework in this proceeding, consistent with the goals of the Energy Action Plan. This, in turn, will provide a context for resource-specific incentive mechanisms we may consider in other proceedings. Any discussion of incentive mechanisms, whether supply-side or demand-side, will be carefully coordinated by the assigned ALJs and Commissioners in rulemaking proceedings relevant to particular resources (for example, energy efficiency incentives in R.01-08-028 or demand response incentives in R.02-06-001) and the assigned ALJ and Commissioner in this rulemaking using the Case Management Conference mechanism previously described.

E. Development of Long-Term Policy for Expiring QF Contracts

This Commission has already committed to a modification of current QF pricing methodologies,¹⁶ and the upcoming QF pricing rulemaking that will accomplish this task, along with any other proceedings(s) involving avoided costs, will be coordinated with this proceeding. The Commission will also explore in this proceeding the development of a long-term policy for addressing expiring QF contracts.

Prior to the time the Commission adopts such a policy, it will allow existing QFs with expired or soon-to-be expired utility contracts to participate in the market via (i) voluntary participation in IOU competitive bidding processes;

¹⁶ D.03-12-062.

(ii) renegotiation of contract terms by the QF and the IOU on a case-by-case basis; and (iii) five-year SO1 contracts with the understanding that appropriate revisions by the Commission of the QF pricing methodology will apply to the renewed five-year SO1 contracts. The Commission found that compliance with any of these three alternatives would ensure fairness to the QF community, and to IOUs and their ratepayers.¹⁷

Although D.04-01-050 may have relieved the immediate pressure, our task in this proceeding is to determine for the longer term a policy addressing how to handle expiring QF contracts. We will begin this determination by inviting parties to file their proposals for such a long-term policy, and then taking written comments on these proposals. Respondents and other commenting parties shall specify how their proposals meet the test used in D.04-01-050: assuring fairness both to the QF community and to the IOUs and their ratepayers. Parties who believe that the Commission must hold evidentiary hearings on these proposals, and the underlying issues, must specify the issues requiring hearings and why hearings are required on those issues. We will establish the schedule for these filings at the April 30 PHC. After reviewing these filings, we will determine how to proceed in developing our long-term policy on expiring QF contracts.

¹⁷ D.04-01-050, *mimeo.*, p.158.

F. Review of Management Audits of SDG&E's and PG&E's Electric Procurement Transactions with Affiliates

1. SDG&E Management Audit

As noted above, D.04-01-050 specified that the review of this audit will occur in this proceeding. This is a review of whether SDG&E's negotiated transactions with SoCalGas should be subject to special transaction rules and reporting requirements.¹⁸ This management audit is to be narrowly focused on two issues: Sempra Energy Utilities' (SEU) participation in the risk management committee structure for SDG&E electric procurement operations; and any rules or reporting needed for SDG&E's energy procurement transactions with SoCalGas. The Commission has required its Energy Division staff to draft the scope of work required, select an independent auditor, and oversee that analysis. At the audit's conclusion, the report is to be filed with the Commission and served on all parties to this proceeding. The Commission requires the auditor to remain available to explain the report's findings and to testify in evidentiary hearings the Commission may hold on the report's findings.

For the moment, D.04-01-050 has detailed the audit workplan and the course to be followed after preparation of the audit report. The Energy Division should be prepared to provide a status report to the assigned ALJ at the initial Prehearing Conference in this proceeding.

¹⁸ D.04-01-050, *mimeo.*, p. 74.

2. PG&E Management Audit

D.04-01-050 also specifies that the review of PG&E's management audit take place in this proceeding. After reviewing a series of procurement-related affiliate dealings, that decision stated:

“We should establish rules for any dealings with PG&E Gas Transmission Northwest if PG&E needs to deal with this affiliate in order to access Canadian gas pipelines. In cases where PG&E is using its own facilities, we have the same concern with negotiated rates that we discuss earlier for SDG&E and also question whether the limited competitive market for storage services is an appropriate benchmark or whether a cost-based standard should be developed. For dealings with other departments, we should examine any potential for abuse due to different department's cost recovery mechanisms and incentive structures. Therefore, we direct a management audit focused on these procurement issues be undertaken using the same procedure we specify above for the management audit of SDG&E.” (D.04-01-050, *mimeo.*, p. 78.)

Again, our prior decision has detailed the audit workplan and the course to be followed after preparation of the audit report. The Energy Division should be prepared to provide a status report on the audit's progress to the assigned ALJ at the initial PHC in this proceeding.

IV. Category of Proceeding

The Commission's Rules of Practice and Procedure require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing.¹⁹ As a preliminary matter, we determine that this proceeding is ratesetting because our consideration and approval of the

¹⁹ Rule 6(c)(2).

respondents' long-term plans will establish mechanisms that in turn impact respondents' rates.²⁰ As stated previously, we will hold evidentiary hearings as part of our review of the long-term procurement plans.

As provided in Rule 6(c)(2), any person who objects to the preliminary categorization of this rulemaking as "ratesetting" or to the preliminary hearing determination, shall state its objections in its PHC Statement. After the PHC in this matter, the assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 6.4.

V. Schedule

The preliminary schedule is set forth below. This schedule will be discussed at, and further refined following, the first PHC on April 30, 2004, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco. This proceeding will conform to the statutory case management deadline for ratesetting matters, set forth in Pub.Util. Code § 1701.5, and the assigned Commissioner will provide more guidance on this point in the Scoping Memo to be issued following the PHC.

Working Outlines for Long-Term Plans	April 1, 2004
Interested Party Comments on Utilities' Working Outlines	April 15, 2004
PHC Statements Due	April 26, 2004
Prehearing Conference	April 30, 2004

²⁰ Rule 5(c).

VI. Parties and Service List

Interested persons will have 20 days from the date of mailing to submit a request to be added to the service list for this proceeding. Since our order names PG&E, SDG&E, and SCE respondents to this rulemaking, by virtue of that fact, they will appear on the official service list.

We will also serve this order on those who are on the service lists for the following related proceedings:

- R.01-10-024, the procurement rulemaking;
- R.03-10-003, the community choice aggregation rulemaking;
- R.02-06-001, the demand response rulemaking;
- R.99-10-025 and R.04-03-017, existing distributed generation dockets;
- R.01-08-028, the energy efficiency rulemaking;
- I.00-11-001, the transmission planning investigation;
- R.04-01-026, the transmission assessment rulemaking;
- R.99-11-022, addressing certain QF pricing issues; and
- R.04-01-025, the natural gas supply rulemaking.

Within 20 days of the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ_Process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding. The service list will be posted on the Commission's web site, www.cpuc.ca.gov, as soon as possible.

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)703-7074,

(866)836-7875 (TTY – toll free) or (415)703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

We also intend to use the electronic service protocols listed in Appendix A to this order. Anyone requiring paper service of documents in this proceeding should note that requirement in his/her request to be added to the official service list.

VII. *Ex Parte* Communications

This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), which prohibits *ex parte* communications unless certain requirements are met (see also, Rule 7(c)). An *ex parte* communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “*ex parte* communications.”²¹

By law, oral *ex parte* communications may be permitted by any commissioner if all interested parties are invited and given not less than three business days’ notice. If such a meeting is granted to any individual party, all other parties must be granted individual *ex parte* meetings of a substantially equal period of time and shall be sent a notice at the time the individual request is granted. Written *ex parte* communications may be permitted provided that

²¹ See Rules of Practice and Procedure, Rules 5(e), 5(f), and 5(h).

copies of the communication are transmitted to all parties on the same day. (Pub. Util. Code § 1701.3(c); Rule 7(c).) In addition to complying with all of the above requirements, parties must report *ex parte* communications as specified in Rule 7.1.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The Commission hereby institutes this rulemaking on its own motion to adopt long-term resource plans for named electric utilities and to continue its ongoing efforts to promote policy and program coordination and integration in electric utility resource planning.
2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) are Respondents to this proceeding.
3. This is the successor proceeding to the Commission's procurement rulemaking, R.01-10-024, and the record developed in that proceeding is fully available for consideration in this proceeding.
4. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served on Respondents, the California Energy Commission, the California Consumer Power and Conservation Financing Authority, the California Independent System Operator, and parties to the following existing Commission proceedings: R.01-10-024; R.03-10-003; R.02-06-001; R.99-10-025 and R.04-03-017; R.01-08-028; I.00-11-001; R.04-01-026; R.99-11-022; and R.04-01-025.
5. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking shall send a request to the Commission's Process Office, 505 Van

Ness Avenue, San Francisco, California, 94102 (or ALJ_Process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding. Parties shall also appear at the first prehearing conference (PHC) in order to enter an appearance in the proceeding.

6. All parties shall abide by the Electronic Service Protocols attached as Appendix A to this order.

7. The category of this rulemaking is preliminarily determined to be “ratesetting.” Any person who objects to the preliminary categorization of this rulemaking as “ratesetting” shall state its objections in its PHC Statement.

8. Respondents shall, and other parties may, file comments on the issues identified in the OIR, in their prehearing conference statements by April 26, 2004. Subsequent filings or testimony shall be submitted in accordance with the schedule developed at the first PHC, or in a subsequent ruling, as applicable.

9. The first PHC shall be held on April 30, 2004, at 10:00 a.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.

10. The ALJ may make any revisions to this schedule, as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated April 1, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

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ELECTRONIC SERVICE PROTOCOLS

Party Status in Commission Proceedings

These electronic service protocols are applicable to all “appearances.” In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission’s Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission’s Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

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Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

Merge into a single electronic file the entire document to be served (*e.g.* title page, table of contents, text, attachments, service list).

Attach the document file to an electronic note.

In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.

Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

- Choose "Proceedings" then "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

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The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF APPENDIX A)

APPENDIX B