

**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.

R.04-04-003
(Filed April 1, 2004)

**REPLY COMMENTS OF THE
UNION OF CONCERNED SCIENTISTS
ON UTILITY LONG-TERM PROCUREMENT PLANS**

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FOR: THE UNION OF CONCERNED
SCIENTISTS

Dated: December 13, 2004

In accordance with Rule 77.6 of the Commission’s Rules of Practice and Procedure, the Union of Concerned Scientists (“UCS”) hereby submit these Reply Comments on the Proposed Decision of Administrative Law Judge Brown (“PD”). As explained below: (1) the PD’s greenhouse gas (“GHG”) hedge value is supported by the record and does not conflict with federal law, (2) a 10 percent debt equivalency (“DE”) factor is supported by the record, (3) the renewable portfolio standard (“RPS”) target is a floor, not a ceiling, on renewables procurement, and (4) the LTPPs must contain “upfront and achievable standards and criteria.”

A. The GHG Hedge Value is Consistent with the Evidentiary Record and Federal Law

1. The GHG Hedge Value is Supported by Substantial Evidence

A number of parties argue that the PD’s adoption of the GHG value is premature and speculative because there is no current regulation of GHG emissions.¹ There is substantial evidence in the record to support the PD’s adoption of the GHG values. Parties presented detailed evidence that GHG emissions will be regulated within the next decade.² The range of values adopted in the PD are based on actual values used by several utilities, including PG&E, the Commission’s own consultant report, a Department of Energy analysis, and evidence presented by parties including UCS.³ PG&E has already made the business decision that the probability of future regulation warrants the use of an \$8/ton GHG value in its procurement decisions. The GHG value is no less speculative than the gas forecasts used by the IOUs in their procurement decisions or the actual impact of the debt equivalency factor on the IOUs’ credit ratings.

Several parties state that the reduction in GHG emissions requires coordinated regional and nationwide action and the CPUC should not act unilaterally to regulate emissions but should wait until regulations are in place.⁴ UCS agrees that coordinated action on GHG emissions is warranted, but does not agree that the adoption of GHG values is inconsistent with such action. There is no evidence in the record that the quantification of financial risks from GHG regulation will conflict with or thwart the future regulation. This argument also misunderstands the purpose of the GHG value. As UCS pointed out in its Comments, the GHG value is the quantification of

¹ See, e.g., CLECA/CMTA Opening Comments (“Comm.”), pg. 10; CAC/EPUC Comm. pgs. 9-10; WPTF Comm. pg. 10.

² See, UCS Testimony (Exh. 54), pgs. 11-13; NRDC Testimony (Exh. 58), pgs. 18-21.

³ PD, pgs. 133-134.

⁴ SCE Comm., pgs. 6-7; EPUC Comm., pgs. 9-10. SCE argues for the first time in its Opening Comments that quantifying the cost is speculative because there is no emission control technology currently available. This statement has no support in the record and should be disregarded by the Commission.

the likely costs resulting from GHG regulation, not an externality cost.⁵ The GHG value is a financial risk mitigation tool that is complementary to, not duplicative of, the policies contained in the Energy Action Plan (“EAP”). This Commission has already recognized that customers face financial risks from future regulation of GHG emissions in D.04-01-050 (pg. 108) and in the Avoided Cost docket, R.04-04-025. Therefore, the GHG value will not raise consumer costs.⁶ The cost of carbon emissions is a real cost that either customers or the utilities’ shareholders will have to bear, and hedging against the financial risk of carbon regulation will save consumers money in the long-run.⁷ The utilities already hedge against other risks in their portfolio to prevent excessive consumer costs.

The LTPPs will be the road map for procurement over the next 10 years. The IOUs will be entering into contracts that could extend beyond the implementation of GHG regulations. The purpose of the GHG value is to recognize and mitigate the financial risks of regulation in the current procurement plans. Hedging against future events is a common and prudent portfolio management practice, and not an arbitrary imposition of unnecessary and unjustified costs. The position that the Commission should wait until after regulations are implemented does not address the problem at hand. The Commission has acted reasonably and prudently in requiring that SDG&E and SCE quantify the cost risk to ratepayers consistent with PG&E’s current regulatory risk management practice.

TURN proposes that the GHG costs be limited to the consideration of fossil-fuel resource bids of terms 5 years or more.⁸ While this limit may be reasonable in the near-term, e.g., for contracts that begin and end within the next five years,⁹ UCS disagrees that this should be a permanent exemption on an on-going basis. UCS encourages the Commission to begin exploring options for addressing short-term utility commitments (namely, system purchases that are not unit-contingent) in its staff report on carbon caps. UCS anticipates that the Commission will adjust the GHG values consistent with new developments in state, regional, or federal carbon policy.

⁵ UCS Comm., pg. 8.

⁶ Sempra Energy Global Enterprises Comm., pg. 3; CAC/EPUC Comm., pg. 10; CLECA/CMTA Comm., pg. 4.

⁷ NRDC Reply Brief, pg. 6.

⁸ TURN Comm, pg. 9.

⁹ UCS agrees that SCE should not be required to apply the adder in its current solicitation.

Thus, it is inappropriate to defer adoption of a GHG value to R.04-04-025 as some parties suggest.¹⁰ That proceeding does not consider integrated resource planning, nor does it encompass all resource types; instead it considers avoided costs for specific resources. SDG&E is disingenuous in requesting the Commission “fully examine this issue” in R.04-04-025 when it has filed comments in that proceeding opposing the use of an environmental avoided cost value.¹¹ These parties are proposing a delay tactic which the Commission should reject.

2. The GHG Value Does Not Violate State or Federal Law

SCE argues that the GHG value conflicts with federal and state law.¹² SCE argues that the GHG value violates PURPA in that utility avoided costs for QFs must include only actual costs, and the state prohibition against requiring IOUs to buy renewable power at rates that exceed market prices.¹³ First, the FERC decisions cited by SCE address the issue of setting a utility’s avoided cost of purchasing power from QFs; the decision does not apply to the quantification of actual costs that are not otherwise reflected in bids from non-QF sources.¹⁴ These FERC cases do not apply to the GHG values adopted by the PD, PURPA does not apply to the GHG issues in this docket, and SCE never discusses the fact that the Commission can and does allow the IOUs to consider gas price forecasts that are not current realizable costs, and non-price related factors, such as the DE factor, in bid evaluations and avoided costs.

SCE also claims that the state RPS law requirement that the IOUs pay no more than the market price for renewable resources renders the GHG values illegal.¹⁵ As with the FERC cases, the RPS laws do not apply to the GHG values adopted by the PD. SCE again fails to acknowledge that the GHG value will be employed to reflect the real costs to consumers of all sources of generation. It is telling that SCE failed to raise this legal argument in its opening brief

¹⁰ SDG&E Comm., pg. 6; IEP Comm., pg. 6; CLECA/CMTA Comm., pg. 11.

¹¹ “Post-Workshop Comments of SDG&E and SoCal Gas on *A Forecast of Cost Effectiveness Avoided Costs and Externality Adders*. (8/20/04) R.04-04-025, pgs. 17, and Appendix A.

¹² SCE Comm, pg. 7.

¹³ Id., pgs. 7-8; 16 U.S.C. §824a-3(b); Pub.Util.Code §399.15(c).

¹⁴ *SCE and SDG&E*, 71 FERC ¶ 61,269 (June 2, 1995) (failure to include all generation sources in determination of utility avoided costs violates PURPA), *Midwest Power Systems Inc.* 78 FERC, ¶ 61,067 (Jan. 29, 1997) (state goal for renewable resources procurement does not violate PURPA). In his concurring opinion Commr. Massey noted, “Our order in no way affects the authority of states to adopt and implement power supply policies outside of PURPA. Our order today construes only the requirements of PURPA, and does not (indeed, could not) purpose to limit the authority of states beyond the context of PURPA. Our order says only that states cannot act under PURPA to require utilities to pay more than their avoided costs.” 71 FERC, at 62,081 (Commr. Massey, concurring in part, dissenting in part), quoting 70 FERC ¶, 61,215 (1995) (concurring opinion of Commr. Massey).

¹⁵ SCE Comm., pg 7, citing Pub.Util.Code §399.15(c).

in arguing for a debt equivalency factor. SCE fails to show that the GHG value is contrary to state or federal law.

B. A 10 Percent DE Factor is Supported by Substantial Evidence in the Record

The IOUs incorrectly claim that the PD's 10 percent DE factor is arbitrary has no support in the record.¹⁶ PG&E argues that S&P's quantitative DE factor of 30 percent is "undisputed" and should be adopted as is. While it is true that no party disputed that S&P uses a 30 percent factor as one element in its consideration of DE, parties did dispute that this is the only factor used by S&P, Moody's or Fitch's in assessing creditworthiness. The PD considered the evidence presented and found that "We find it reasonable to make some acknowledgement that DE is a factor in utility creditworthiness, but not to the degree shown in the S&P methodology."¹⁷

The record shows that other credit rating agencies use different risk factors that are no less credible or important than S&P's quantitative analysis and that S&P itself uses the 30 percent figure as only one element in its overall analysis of creditworthiness.¹⁸ The IOUs' comments are not an accurate reflection of the extensive evidence on DE factor in this case and should be disregarded.

C. The PD Properly Finds That the RPS Standard is a Floor, Not a Ceiling.

SCE argues that the PD's finding that the RPS target is a floor not a ceiling violates section 399.15(b) of the Public Utilities Code.¹⁹ First, section 399.15 addresses the establishment of annual procurement goals to meet the RPS and is not a general prohibition against the Commission's exercise of its broad discretion to set the terms and conditions of utility procurement that reflects sound public policy and the best interests of the ratepayers. Second, the PD does not require the IOUs to procure renewable resources regardless of cost.²⁰ The PD finds that the RPS standards are a floor not a ceiling and then explains the context of the finding -- that the EAP directs the IOUs to consider all "cost effective" renewable resources before considering conventional supply.²¹ The PD does not alter the least cost/best fit criteria, nor does it require IOUs to procure renewables at any cost.

¹⁶ SDG&E Comm, pg. 3; PG&E Comm, pg. 10; SCE, Comm, pgs. 10-11.

¹⁷ PD, pgs. 126-127.

¹⁸ See, UCS Op.Br., pgs. 21-23.

¹⁹ SCE Comm, pgs. 5-6.

²⁰ See, e.g., CLECA Comm., pgs. 8-9; WPTF Comm., pg. 10.

²¹ PD, pg. 73.

D. The Commission Must Ensure that the LTPPs Contain “Upfront and Achievable Standards and Criteria”

UCS does not oppose TURN's proposal to amend its original proposal that IOU contracts of 3 years or less are not subject to Commission preapproval, to include contracts of 5 years or less. However, as UCS stated in its Opening Comments, in order to ensure that any individual IOU contract is in compliance with the LTPPs, the LTPPs must be revised to incorporate the changes required by the final decision. Under AB 57, the Commission can approve an expedited review process only if the LTPPs contain:

Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The Commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan.²²

It is difficult to imagine how Energy Division staff can ensure compliance within the short "deemed approved" time frames advocated by the IOUs if there is not a single, integrated procurement plan document that contains the “upfront achievable standards and criteria.” The failure to require a single, integrated document is not consistent with the direction of AB 57 and these problems are magnified if TURN’s amended proposal is adopted.

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Respectfully submitted,

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²² Pub.Util.Code §454.5(c)(3).

CERTIFICATE OF SERVICE

I, Enid Powell, certify that I have, on this date, caused the foregoing REPLY COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON UTILITY LONG-TERM PROCUREMENT PLANS to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. Mail on the parties listed on the Service List for the proceeding in California Public Utilities Commission Docket No. R.04-04-003. I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on December 13, 2004, at San Francisco, California.

Enid Powell