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	R.01-10-024 (filed October 25, 2001)

COMMENTS OF RATEPAYERS FOR AFFORDABLE GREEN ENERGY ON COMMISSIONER LYNCH'S REVISED ALTERNATE DECISION (MAILED JANUARY 12, 2004)

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Representing
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Ratepayers for Affordable Green Energy (RAGE) hereby submits comments on the "Revised Alternate Proposed Decision of Commissioner Lynch" (Mailed 1/12/2004) in CPUC R.01-10-024.

1. Summary

We are writing to request that any Commission decisions on the subject of multi-year electric utility procurement or power plant acquisition be delayed until the Commission has completed its regulations for Community Choice Aggregation ("CCA") and the Renewables Portfolio Standard ("RPS").

However, recognizing the likelihood that one of the decisions will be approved, we wish to record our preference for the Commissioner Loretta Lynch's Alternate among those put forward by President Michael Peevey and Administrative Law Judge Christine Walwyn.

2. Opposition to Any Multi-Year Procurement Framework Until R.0310003 Evidentiary Record is Complete

Since the Commission voted on an amended and narrowed decision at its December 18, 2003 meeting authorizing electric utility procurement for 2004 only, we believe that Commission approval of a multi-year procurement framework at this juncture is (1) premature, (2) would adversely impact the options available to Community Choice Aggregators under AB117, and (3) will prevent a full implementation of the Renewables Portfolio Standard (RPS), SB1078.

In particular, we are concerned that Commission should not approve any a priori multi-year reserve requirement or an unduly high/conservative multi-year utility load forecast for electric utility procurement until CCA regulations are approved and workshops undertaken to allow for Communty Choice Aggregation (CCA) to be implemented without penalty or prejudice alongside electric utility procurement.

As all three decisions on the table propose that a non-bypassable surcharge be imposed on Community Choice Aggregators to recover the cost of reserve requirements, setting a high reserve requirement at this juncture will impose a priori barriers to communities seeking electric service providers, blocking Community Choice Aggregators from exercising their right to depart from PG&E electricity procurement pursuant to their "authorization" to seek a new electric service provider pursuant to Public Utilities Code § 366.2 (c) (1), and violating California ratepayers' "entitlement" to aggregate and leverage negotiation of contracts with electric service providers pursuant to Public Utilities Code § 366.2 (a)(1).

Workshops are clearly needed to build an evidentiary record on the relationship between multi-year electric utility procurement and CCA/ RPS, and to implement appropriate rules that will allow for a non-prejudicial enforcement of AB57, AB117 and SB1078 prior to any framework for long-term procurement.

The only reason for urgency that has been given for approving a framework for multi-year utility electric procurement or power plant acquisition so soon in 2004 has come from the Western Power Trading Forum, which has 10,000MW of capacity in Department of Water Resources contracts that will terminate at the end of 2004. Understandably, the owners of these power plants want customers, and hope that the Commission will provide the utilities'captive ratepayers for this purpose. However, it is not in the public interest to lock ratepayers into new contracts, rather it is in their interest that this capacity be available for competitive supply to Community Choice Aggregators. It is inconsistent for WTPF to argue for a competitive market while seeking to secure captive customers for their member's available capacity.

Otherwise, it has been suggested that California will face blackouts unless the utilities are forced to build new gas-fired power plants immediately, and all three proposed decisions propose that ratepayers should be put on the hook for utility plant acquisition in order to provide underwriting for such investments - which no bank is willing to underwrite given the expected doubling of gas prices in 2004-07. To this we have two responses:

- First, as it is a foregone conclusion that rate-based utility contracts and plants will pass through any increases in the cost of natural gas to ratepayers, it is clear ratepayers will not be protected, but rather abused, by any long-term natural-gas contract or power plant acquisition;
- Second, it will not do for the Commission to claim on the one hand that the blackouts of 2000 and 2001 were caused not by shortages but manipulation of (unregulated) gas supplies and gas-fired generation, but then also claim that California has a power shortage and should solve it with increased gas dependency.

In fact, blackouts and price volatility were the inevitable products of an undiversified market. During the competitive market between 1998 and 2000, less than 5% of California customers could find competitive suppliers. Saying small customers were too expensive to serve, Enron abandoned the retail market only months after it opened, and their competitors followed them - into the spot markets. With 95% of California's IOU customers receiving their electricity on day ahead trading, it is unsurprising that collusion followed. We predicted it would as early as 1996 when AB1890 passed - and now we predict the same will happen if California's markets are prevented from pursuing Community Choice and ratepayers are locked into even greater natural gas dependency in California's semi-regulated IOU system.

We therefore request that any vote on a utility procurement framework be delayed at least six (6) months to provide adequate time for the Commission to complete regulations for CCA and RPS. We strongly suggest that the Commission coordinate its ongoing CCA and RPS proceedings with its procurement proceeding, fast tracking all three proceedings so that a long-term procurement framework may be established during the second half of 2004.

Our coalition, Ratepayers for Affordable Green Energy ("R.A.G.E." including Greenpeace USA, Public Citizen, Local Power, Pacific Environment, Border Power Plant Working Group and

Marin CAN) filed Comments to this effect at the CPUC Docket Office along with a Motion to Intervene on December 8, 2003. Judge Walwyn has not yet ruled on this motion.

3. An Uneven Playing Field

As stated in our earlier comments, all of the CPUC's proposed decisions on long-term procurement will approve a utility procurement-centric "framework" that is more (Peevey, Walwyn) or less (Lynch) oblivious to its impacts on Community Choice Aggregation and directly threatens to prejudice ratepayers that seek this option, creating a severely uneven playing field for Communities and the Utilities whose procurement they wish to escape.

Primarily this damage is done by the very act of approving a framework for multi-year utility procurement at the very moment that the Commission's proceedings for Community Choice Aggregation, R.03-10-003 is completing its first workshops. Not coincidentally, the Community Choice proceeding has taken up new utility procurement and the associated Customer Responsibility Surcharge as its first "threshold" issue.

Another major threshold issue in R0310003 is the question of how to create a rational, orderly and holistic gatekeeping process for blocks of ratepayers to depart from, and occasionally return to, bundled service, and how to preserve the "indifference principle" for bundled service ratepayers while also protecting ratepayers that leave utility procurement from punitive charges.

A failure to integrate CRS calculation with gatekeeping is a serious problem that will come back to haunt the Commission in the form of jurisdictional crises. As R0310003 begins to look at how to calculate the CRS for new utility procurement on Communities seeking to depart, R01-10-024 is now on the verge of approving a framework for utility procurement that will threaten substantial non-bypassable surcharges on such ratepayers and even make decisions about the responsibilities of CCAs in paying for reserve margins. The Commission should consider these issues in R0310003 before making any final decisions in R0110024.

The Commission must connect the dots between its ongoing utility procurement proceeding and Community Choice Aggregation, which should not be difficult as both proceedings share the same Assigned Commissioner (President Peevey). It is critical that the Commission establish an evidentiary record of prospective CCAs who wish to depart from utility procurement, so that a rational, holistic and balanced gatekeeping of utility procurement with CCA can be undertaken.

The utilities have asked for a gatekeeping of departing and returning load, and this is correct. But on the other hand it is equally critical - to apply the indifference principle to CCA customers - that the gatekeeping be also used to minimize electric procurement impacts on CCAs and not merely "calculate" them while blindly rate-basing utility contracts. We do not disagree with the utilities will need time to process transfers of customers, upgrade business and information systems - and will need protocols for returning customers. But this must be a two-way street.

Finally, AB117 allows CCAs to design local programs according to local conditions, and requires utilities to provide data to CCAs on their constituents "electricity needs and patterns of usage"[((Section 366.2(c)(9)]. AB117 also orders the Commission to direct the administrator of energy efficiency funds to "work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs"[PUC Code Section 381.1(c))]. While also protecting the effectiveness of broader statewide or regional programs, AB117 clearly provide for local communities to plan for the shaping their aggregated loads - an activity that directly impacts and is directly impacted by, load forecasting and utility procurement.

A rushed procurement framework will also undermine the RPS by establishing an order of actual commitment in which the renewable resources come later. The fact that the Commission has already committed to accelerate the RPS targets to 20% by 2010 for all utilities and Load Serving Entities does not impress us any more than California's Zero Emission Vehicle requirement, which, because it was not implemented in an orderly manner, was simply retracted by the Governor when the deadline arrived.

It is clear that the utilities will follow any framework approval with one kind of application only - gas-fired power contracts. Groups as diverse as Greenpeace and Pacific Environment (which works exclusively on gas fields in Russia but made an exception), and groups fighting LNG terminals and power plants on the Mexican and Long Beach border agree that this is dangerous because the procurement framework will leverage investment in new drilling and off-shore terminals to deliver new foreign gas, the demand for which this framework will line up. In fact it is stated in the decisions that utilities should be allowed to purchase the state gas plant permits issued by the former Davis administration, and use ratepayers to underwrite them.

It provides little comfort that the Commission has declared that all IOUs must be ready to conduct RPS solicitations in the 2nd quarter of 2004. A solicitation is a question mark, not an answer: it does not automatically produce a result, which depends upon relative costs - and while nothing in these decisions would diminish the Commission's 20% by 2010 RPS obligation, the fact remains that if renewables are not online by a certain date, then the rules are likely to be changed, just like ZEV. It is easy for governments to make promises during a political emergency - and much harder to follow through on their commitments. The devil is in the details - we are just asking to set the process straight so that there is an even playing field framework-wise between Community Choice Aggregation regs and utility procurement regs.

San Francisco, San Diego and other cities are prepared to go far beyond the RPS requirements. The success of our efforts here, and similar efforts in Marin, Los Angeles, and other communities, could be undermined by a rushed adoption of a utility procurement framework. If California is to achieve the 20% goal, protecting the ability of these cities to move forward on a level playing field with Edison, PG&E and SDG&E will prove critical. Local governments representing over 12 million Californians, including the City and County of San Francisco, Los

Angeles County and ten Los Angeles area municipalities as well as Marin County unanimously passed resolutions in support of our position.

The outcome of approving a long-term utility procurement framework prior to a CCA framework is prejudice and discrimination. While any final long-term commitment would be still subject to prior review and approval by the Commission, and Community Choice advocates will have a chance to object in the event that any long-term deals are proposed, the framework for such proposals will have already been approved before the CPUC has given the particular structure of Community Choice Aggregation (of which you also know little) similar consideration. There should be an integration of R0310003 and R0110024 so that a coordinated gatekeeping process can be established that both calculates and minimizes not only the costs imposed on bundled service customers but also minimizes new utility procurement impacts on the Customer Responsibility Surcharge for departing commnities.

AB57 and AB117 were signed within ten minutes of each other (Chapter 835 and 838 of 2002) in order to put in place a system that would allow both Community Choice Aggregation and utility procurement to coexist. The new Community Choice Aggregation proceeding at the CPUC could produce an adequate evidentiary record of gatekeeping principles, and a list of the Cities ready to produce Implementation Plans within six months. At least that would get Community Choice and utility procurement processes more parallel and allow for the CPUC to develop a coherent and holistic policy that integrates the Community Choice Implementation Plans and Customer Responsibility Surcharge calculations with utility procurement planning.

Otherwise we face a race between utility procurement and CCA departures, where communities will have to scramble to avoid additional Customer Responsibility Surcharge increases from new utility procurement: and utilities will obviously get a head start on an uneven playing field that will indeed discourage some communities away from trying to escape their utilities' procurement. It is against the interests of all ratepayers to irrationally threaten their one alternative to captivity.

Such an uneven race will also retard the diversification of California’s energy markets, creating a climate for abuse of market power that is more likely to deliver more blackouts than any fictitious shortage of available generation capacity.

The fact is that because electric utility procurement was fast-tracked and Community Choice Aggregation slow-tracked by the CPUC since 2002, municipalities are only now beginning to get involved in the regulatory discussion. Naturally, cities wish to see clarification of "framework" questions, in particular the issue of the Customer Responsibility Surcharge, before they commit huge resources such as the money to pay to participate in multiple CPUC proceedings such as the utility contracts for gas-fired electricity that will immediately follow any approved utility procurement framework.

In the meantime the utility procurement framework, which has been formed without consideration of its impacts on Community Choice Aggregation customers, would now impose a

priori constraints on the formation of a Community Choice Aggregation framework in R0310003. Every time the Commission undertakes its review of a utility proposal and considers resource need, costs and many other factors and allows them to execute contracts, this compounds the constraints and costs associated with Community Choice Aggregation for no good reason.

That is why California's energy security is better served by bringing CCA and utility procurement into a parallel process rather than rushing ahead with multi-year utility procurement before it is ready to proceed in a manner that will encourage market diversification and accelerate the development of renewable resources by entities, such as San Francisco, San Diego and others, that are prepared to develop them more expeditiously..

Local Power is urging parties to support a delay in the adoption of any procurement decision for at least six months and we see no reason for urgency about rushing to approve a long-term framework when we are already in year 2 of year-to-year utility procurement authorizations (such as the December 18 vote). While power industry lobbyists claim that the CPUC must set resource adequacy requirements now and immediately begin workshops on measurement and implementation issues throughout 2004, and that waiting six months will delay implementation well into 2005 (meaning a third year of one year authorizations), we see nothing wrong with this. Another one year authorization for 2005 would indeed protect against the possibility of the utilities being caught short.

False urgency should not be allowed to justify a fundamentally unsound framework that irrationally discriminates against Community Choice Aggregators. The concern that the utilities will have to scramble to acquire capacity to satisfy the escalating reserve margins proposed by the utilities, ORA, the CEC and TURN will also apply whenever the long-term process commences and contracts are approved, depending on what the reserve margin that is set in whatever framework is finally passed. Clearly this could be changed to reflect the new procurement schedule. The opposite is in fact true; an approved utility procurement framework now will very likely result in an immediate applications for all gas-fired capacity. If this is signed first it will likely cause a new and prolonged rate shock; now is not a good time to lock into gas contracts, as ratepayers will likey discover.

4. Preference for the Lynch Alternate Among the Three

Local Power agrees that the Lynch alternate is far better than the Peevey/Walwyn decisions, for keeping resource adequacy decisions at the CPUC, directing the utilities to file revised long-term plans in the spring, actively discouraging them from entering into long-term contracts until their load forecasts are adjusted to account for potential swings in direct access and Community Choice, reiterating that any long-term resource acquisitions must go through a lengthy review process, and reaffirming the CPUC's commitment to a 20% RPS target by 2010. Local Power also particularly opposes the Peevey alternate decision's directing the ISO to establish resource adequacy requirements and calls on the utilities to have 17% reserves by 2005.

But the larger issue is that California should not approve a framework for utility procurement until it has developed an appropriate, complementary framework for Community Choice Aggregation. These are halves of the same system (speculation on the core/noncore bill in the legislature aside); false urgency will only deliver more of the same policy disasters for which California's energy establishment is now famous. To a limited extent, the revised Lynch Alternate attempts to accommodate this need, and is therefore preferable to the others.

a. We agree that "providing the utilities with procurement approval extending throughout the next five years without resolving the concomitant statutory issues and policies in AB117 (Migden, 2002) and SB1078 (Sher, 2002), this Commission would be handing the utilities a pre-approved blank check for five years worth of procurement authority" (Lynch, 1/12/04, Summary).

b. We support Commissioner Lynch's Decision instead resolving many of the policy issues raised in the plans filed in mid 2003, moving some of those issues to other, more appropriate fora, and ordering the utilities to file revised long-term plans after a series of workshops in the first quarter of 2004, with final approval of those long-term plans coming before the end of 2004.

c. We agree with the Lynch Alternate's finding that there is ample surplus of electric energy capacity available in the Western Electricity Coordinating Council region that California can draw upon today and for the next few years, and we support the Lynch Alternate's adoption of a gradual phase-in of a planning reserve requirement over the next four years.

d. We agree with the Lynch Alternate's rejection of decision-making based on non-public and/or redacted materials.

e. We agree with the idea of having the utilities resubmit their long-term procurement plans in 2004, following the Commission's adoption of specific resource adequacy criteria to be addressed in upcoming workshops in the first quarter of 2004.

f. We agree that "it is essential that California does not over-commit to existing fossil resources because this could raise rates for consumers and preclude the utilities from adhering to the loading order preference in the Energy Action Plan.

g. We ***disagree,*** however, with the Lynch Alternate's provision for direct utility ownership of new plant.

1. While Commissioner Lynch points out that utility-owned generation is subject to CPUC jurisdiction, yet such generation will be unavailable to Community Choice Aggregators, and will make ratepayers responsible for such investments over decades, imposing non-bypassable surcharges that will certainly curtail the ability of communities to depart from utility procurement;

2. while supportive of the Lynch Alternate's ban on affiliate transactions, we oppose allowing affiliate transactions even with existing plant. We believe that the holding companies and affiliates of each utility have potential conflicts of interest relative to making future generation investments outside of their utility's service territory and sold to other load serving entities.

5. Comparison of Lynch Alternate to the Peevey Alternate

The Lynch Alternate would provide the most protections against utilities buying power too much power too fast - whereas Administrative Law Judge Christine Walwyn's Proposed Decision would provide fewer protections, and President Michael Peevey's Alternate will likely provide none at all. As President Peevey has refused to release his final redrafted "Alternate" until Tuesday at noon, this leaves just 5 hours for the public to read a 250 page document and make comment to Commission staff before the Commission votes Thursday morning, so we can only guess based on his past drafts:

a. The Lynch decision adopts a gradual phase-in of a planning reserve requirement over the next four years, whereas Peevey requires the utilities to buy the power all up front by 2005, even though this would expose ratepayers to extreme gas price increases and block the development of energy efficiency and renewable energy.

b. The Lynch Alternate makes permanent the existing 15% planning reserve requirement, whereas Peevey raises it to 17% (higher than any other state), overbuying power and billing it to ratepayers.

c. Peevey would give the Commission's jurisdiction to the Independent System Operator to establish resource adequacy requirements. Lynch would keep resource adequacy decisions at the CPUC, direct the utilities to file revised long-term plans in the spring, actively discourage the utilities from entering into long-term contracts until their load forecasts are adjusted to account for Community Choice, and reiterates that any long-term resource acquisitions must go through a lengthy review process.

d. Finally, unlike Peevey, Lynch reaffirms the CPUC's commitment to a 20% RPS target by 2010. And while we are very displeased that all three decisions on the table would allow for utilities to propose plans to build or buy power plants at ratepayer risk and expense, the filing of long-term plans for approval by the Commission would still have to file applications and, in the case of utility ownership of a new plant, the utility must receive a Certificate of Public Convenience and Necessity. While imperfect, the Lynch Alternate presents the best chances that Community Choice and renewable energy will find a way to survive alongside utility procurement and power plant acquisitions.

6. Conclusion

While we maintain our request that the utility procurement framework vote be delayed six months to allow the CCA proceeding to build an evidentiary record to better inform utility procurement and minimize costs to ratepayers while also providing for the formation of a diversified electricity market that includes captive and competitive supply for all classes of ratepayers, we wish to register our preference for Commissioner Loretta Lynch's Revised Alternate.

The Peevey or Walwyn plans could make California dependent on foreign Liquefied Natural Gas (LNG) to keep the lights on - and thus expose electricity prices to volatile natural gas prices, and make California dependent on future resource wars.

This is not merely a theoretical possibility but an impending fact of life in California. Significantly, a formal application to build a $400 million LNG terminal at the Port of Long Beach will be filed next week with the Federal Energy Regulatory Commission and the port by Sound Energy Solutions, a subsidiary of Mitsubishi Corp., says the LNG terminal will take cooled liquefied natural fuel delivered from overseas by tanker to the facility and heat it into gas for delivery by pipeline to power plants and fuel suppliers, filling about 10 percent of the daily demand in California. Power plants already consume 40 percent of all gas burned in California and this will increase based on the path that the CPUC's utility procurement takes. In addition to depending on a fuel whose price has already increased by 50% in the last six months, natural gas plants are a major source of climate change and cancer.

The world's fifth largest economy, California's embrace of gas dependency will have grave upstream implications. If ratepayers are saddled with new utility power plant construction and excessive reserve margin requirements, the result will be to lock California into a massive new gas development scheme based on foreign gas supply that is being pushed on California by the Bush Administration. The coalition anticipates that this could leverage new gas drilling in Russia (the largest gas reserves alongside the Middle East), causing further air and ocean pollution, and threatening the endangered Eastern Pacific Gray Whale.

The environmental impacts will also be felt at home. The coalition believes that dependence on imported gas will put pressure on Southern California communities to accept proposed new LNG terminals now being proposed. Long Beach could become the new host to receive Russian, Middle Eastern and Australian gas into our power grid, or it could be in San Diego, or in on the Mexican border where so many gas-fired power plants like have been built in recent years, free of U.S. and state environmental regulations, for importation to California's power grid?

This is also more than merely hypothetical. Under pressure from the U.S. Department of Energy, power plant owner InterGen shut down one generating unit at its Mexicali power plant last weekend after U.S. District Court Judge judge Irma E. Gonzalez said its permits were illegal because InterGen had misled the government into believing that both of the plant's export turbines were fitted with pollution control devices when it applied for the permits. The plant has been transmitting electricity to California since July, and was only in its lie to the U.S.

Government by local advocates.

What we face is nothing less than a moment of decision in which the CPUC will quietly choose between a California that is energy independent and a California that is powered by foreign gas. The outcome of the vote between Lynch and Peevey/Walwyn could be to keep the door open for cities like San Francisco and San Diego, which have made major commitments to energy independence through renewable resource development and efficiency technologies. Otherwise it could set the stage for a future modeled on Mitsubishi's proposed LNG terminal in Long Beach - in which the price of "Keeping the Lights On" will indeed depend on geopolitical developments in faraway countries.

Fictitious warnings of blackouts have been used in recent years to justify DWR contracts, utility bailout plans, gutting of environmental regulations, and now this. It amounts to nothing but fear-mongering, and should be rejected by the Commission, which should understand by now that the blackouts and volatility of recent years has always been caused by poorly defined regulatory regimes and the gas-based manipulation that naturally follows. Preventing blackouts with new gas-fired power plants is like preventing homicide by suicide. That is why it is so critical that the Commission not give short shrift now to Community Choice and the RPS - the real hope for a sustainable, secure and stable electricity supply.

Furthermore, RAGE urges the Commission not to authorize any rate-basing of monopoly ownership of new power plants.

Respectfully,

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Paul Fenn
RATAPAYERS FOR AFFORDABLE GREEN ENERGY

CERTIFICATE OF SERVICE

I, the undersigned, hereby declare:

1. I am a citizen of the United States of America over the age of eighteen years. My business address is 4281 Piedmont Avenue, Oakland CA 94611. I am not a party to this action.

2. On January 20, I caused service of :

COMMENTS OF RATEPAYERS FOR AFFORDABLE GREEN ENERGY ON COMMISSIONER LYNCH'S REVISED ALTERNATE DECISION (MAILED JANUARY 12, 2004)

to be made by EMAIL upon the parties or their attorneys of record for R.01-10-024.
I declare under penalty of perjury that the foregoing is true and correct. Dated in Oakland, California, this 20th day of January, 2004.

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Courtesy Hard Copies Served:
1. Administrative Law Judge Walwyn
2. Julie Fitch, advisor to President Peevey
3. Manual Ramirez/Steve Weisman, advisors to Commissioner Wood
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