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 ADMINISTRATIVE LAW JUDGE WALWYN'S PROPOSED DECISION (MAILED NOVEMBER 18), ASSIGNED COMMISSIONER PEEVEY'S ALTERNATE DECISION (MAILED NOVEMBER 18) AND COMMISSIONER LYNCH'S ALTERNATE DECISION (MAILED DECEMBER 5)

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Representing
RATEPAYERS FOR AFFORDABLE GREEN ENERGY

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I. Introduction

RATEPAYERS FOR AFFORDABLE GREEN ENERGY ("**RAGE**") was formed for purposes of this event, consists of **LOCAL POWER** (a R.01-10-024 Service List Participant since February 2003 with comments submitted on Decision No. 02-12-074 on February 3, 2003). **GREENPEACE USA**, **PUBLIC CITIZEN**, the **BORDER POWER PLANT WORKING GROUP** and **MARIN CLEAN ALTERNATIVE ENERGY NOW**.

II. Summary

RAGE is very concerned at the outcome of the California Public Utilities Commission's (CPUC's) December 18 decision regarding R.01-10-024, and urges that the Commission to reject any authorization of utility electric procurement beyond one year's duration.

The California Public Utilities Commission (CPUC) will amend and vote between three plans that could make or break renewable and alternative energy markets in California for five years into the future. The outcome of the CPUC vote of December 18 could:

- allow California's electric monopolies to ignore the state's new law requiring minimum levels of green power (Sher, SB1078);
- impose new monopoly exit fees that block San Francisco, San Diego and dozens of California communities now seeking to use the state's 2002 Community Choice law (Migden, AB117) to break away from utility procurement; efforts by these cities to make major investments in renewable energy and efficiency would be blocked by non-economic bypass resulting from these new exit fees until 2009;

- curtail state regulatory authority over its electric monopolies, as the Commission would have surrendering its historic regulatory review and authority over monopoly long-term power contracts, instituting a form of

unregulated monopoly in California;

- put California residents and businesses on the hook to pay for volatile gas-fired power contracts at the very moment that a dramatic natural gas crisis is widely predicted to occur.

Local Power has submitted comments similar to these on February 3, 2003, warning ALJ Walwyn and the members of the Commission of the dangers of restoring monopoly privileges upon companies after the regulatory authority of the state has been diluted.

A five year utility procurement authorization would lock-in virtually all procurement of electricity within the state of California for the next 5 years without any regard to the inclusion of state legislated mandates such as the Renewables Portfolio Standard or Community Choice Aggregation and would neglect Transmission Benchmarks to the detriment of renewable resources such as wind power.

Because the PUC has not yet created procedures and regulations for the Renewables Portfolio Standard (RPS, SB1078) or Community Choice Aggregation (CCA, AB117) or even set rules for development of the transmission necessary for renewable energy projects to be connected to the electric grid, the state's utilities will be encouraged to purchase its entire portfolio from fossil fuel sources, most of them using older and more polluting power plants.

AB57 changes the historical treatment and consequences that flow from utilities' power procurement. The Peevey/Walwyn decisions would authorize the long-term purchase of electricity in California and gives the utilities a blank check to purchase electricity for California as they choose for the next 5 years if they purchase that power within the next two years.

The Commission is putting the cart before the horse allowing the utilities a blank

check and minimal parameters before the Commission finalizes necessary renewables standards or even begins to set Community Choice Aggregation guidelines and rules. This lack of criteria will encourage utilities to purchase all of their portfolios without having to include renewables as part of the mix. Predictably, once all the power has been purchased there will be no room in the procurement portfolio to purchase renewables.

A multi-year procurement authorization (which no party in this proceeding has ever requested), will be to lock down Californians with tens of billions of dollars in power contracts. Two similar plans proposed by Assigned Commissioner Michael Peevey and Administrative Law Judge (ALJ) Walwyn ("the five year blank check plans," both mailed November 18) would allow PG&E, Edison and Sempra to put their customers on the hook again for five years of power procurement contracts, in spite of the fact that ratepayers have already paid the monopolies $Billions to renounce their monopoly rights.

Judge Walwyn and Assigned Commissioner Peevey acknowledge that their approach is "more aggressive than, the timetable and process recommended jointly by the three utilities, the California Energy Commission (CEC), the Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN)," (Walwyn & Peevey, November 18, p.5) but do not justify the aggressiveness with any cause for urgency, and gloss over the fact that rushing into these contracts will result in exposing ratepayers to price volatility, blocking ratepayers from legally departing from utility procurement, and subverting the Renewables Portfolio Standard law.

A third alternate plan (mailed December 5) by Commissioner Loretta Lynch would limit the December 18 utility procurement authorization to one year (2004), and calls for the CPUC to prepare an integrated approach to utility procurement that allows for Community Choice Aggregation and ensures compliance with the

Renewables Portfolio Standard law after 2004. The utilities are currently under a provisional purchasing authority through the first quarter of 2004, and little new procurement will be needed for 2004. While we may not agree with all of Commissioner Lynch's Alternate such as provisions for utility ownership of new power plants (Section B, subsection 3 of the Lynch Alternate), we urge the Commission to limit utility electric procurement to one year as proposed in the Lynch Alternate:

> "We strongly discourage the utilities from engaging in any ad hoc long-term planning without the adoption of the long-term framework within which it must work. AB 57 allows the utilities to avoid after-the-fact reasonableness reviews only if working within a Commission-authorized procurement plan and long-term commitments cannot be afforded this deference if they are not made within approved long-term plans. The current electricity market in the WECC allows California the opportunity to refine the utilities long-term plans before adopting them and we should take advantage of this opportunity rather than rush headlong into additional resource commitments. We share the concerns of the utilities, ratepayer interest groups, and market generators and retailers that with current legislation pending on direct access and a core/noncore market structure, the utilities should be careful to avoid the possibility of making long-term commitments that could become "stranded costs." (Lynch Alternate, V A2)

Finally, we are opposed to direct utility ownership of new power plants, as this would expose ratepayers to even greater risk of rate shocks than would be incurred from multi-year procurement authorizations.

III. Analysis of Impacts of a 5-Year Electric Procurement Authorization Pursuant to AB57

A. Multi-Year Authorization Would Curtail Commission's Regulatory Authority Over Monopolies. For the first time, the California Public Utility Commission's (PUC) pre-approval of Investor Owned Utilities (IOUs) multi-year procurement plans would end any review or changes to accommodate other power sources or providers.

Under both the Peevey Alternate and Walwyn Proposed Decisions, a provisional "Procurement Review Committees" established to evaluate short-term 2002 contracts would be distorted into a potentially permanent surrogate mechanism replacing Commission evaluation of long-term utility contracts that clearly dilutes the purview and authority of the Commission. We agree with Commissioner Lynch's belief that the PRC is inappropriate and dangerous for long-term utility procurement contracts:

> "Though it only has consultative and informal advisory functions, the Commission finds the PRG has been an effective vehicle for IOU dialogue with Commission staff familiar with the nuances of their energy portfolios and the necessary policies/strategies needed to mitigate portfolio risks. However, the PRG has out-lived its intended purpose, which was to create a process for rapid review of the utilities' initial procurement efforts at the end of 2002 as the utilities prepared to resume their traditional procurement role. The PRG has subsequently created a fig leaf to cover the absence of open procurement processes at the Commission. The Commission has voted on a number of procurement resolutions that contained significant redacting of supposedly confidential material, some of which was released after the vote (i.e., not in time to allow non-PRG parties to substantially contribute) or, in some instances, not at all. As we move forward with the procurement process and the evaluation of the long-term plans, we plan to conduct these processes in a much more open manner" (Lynch Alternate, Dec 5, VI, F).

Morever, secret contracts and Procurement Review Committees are inconsistent with the Commission's fiduciary responsibility to ratepayers, a fact that cannot be overcome with "commercially available risk management models":

> "Section 454.5 (b) (1) states that an electrical corporation's proposed procurement plan shall include "an assessment of the price risk associated with the electrical corporation's portfolio." *The Commission has a fiduciary duty to ratepayers to ensure that this price assessment is conducted in a consistent manner, with standards of transparency inherent in today's commercially available risk management models.* Based on the Energy Division's filed workshop report and based on the hearing record, the Commission has a better understanding of the nuances and complexities involved in measuring portfolio risk, as well as the features specific to each utility's energy portfolio. We recommend that portfolio risk be reported using TeVaR." (Peevey, November 18, p. 169)

Unfortunately, commercial risk management models such as TeVaR, which the

monopolies have proposed using to measure and report risk and to trigger Procurement Review Committee review of their hedging plans, are but ultimately keystone cop mechanisms that do not begin to meet the Commission's fiduciary responsibility to ratepayers, and portend continuing scandals and future bailouts.

Instead, discussion of the TeVaR models divert the Commission's attention away from the basic fact that authorizing long-term contracts at this time would transfer significant risks being incurred pursuant to AB57 back to California ratepayers. If the risk management model chosen happens to fail, it is the ratepayer, not the monopoly, who must pay. In other words, the utility procurement being authorized has a monopoly managing their customers' risk without regulatory review of their contracts: "transparency" is inconsistent with secret contracts. While the Procurement Review Committee structure can perhaps be justified on a short-term, provisional (year to year) basis, the idea of transferring such risks to ratepayers for long-term monopoly contracts cannot be justified.

The Procurement Review Committee would create a significantly diluted regulatory regime if used for 5 year contracts, replacing the Commission's former all-knowing oversight and regulatory powers with secret contracts and a proxy Review committee. The fact that TURN sits on the proposed Procurement Review Committee does not suffice as security that the Commission's fiduciary duty to ratepayers is being done. In order to do its duty in this respect the Commission should shorten the term to one year until the Commission has fulfilled its duty to complete regulations on AB117 and SB1078 and is prepared to move forward in an orderly, lawful and circumspect manner.

B. Multi-Year Authorization Would Unnecessarily Expose Ratepayers to Anticipated Gas Price Volatility. One particular reason not to implement power supply decisions beyond one year is that natural gas-fired generation is now more volatile than it ever has been in history, the "coming natural gas crisis" now

widely anticipated. The Commission's fiduciary responsibility to ratepayers requires it to heed widespread warnings, including Spencer Abraham and Alan Greenspan, both of whom have predicted a dramatic and prolonged natural gas price spike starting in 2004. Indeed, Judge Walwyn remarks that rushing into multi-year procurement has the effect of increasing risk to ratepayers:

> "Paradoxically, rushing to implement a reserve requirement might further increase California's reliance on natural-gas fired resources, posing a different set of reliability concerns if there are supply constraints and price risks for the fuel input." (Walwyn, November 18, p. 23)

Walwyn concludes that "an appropriate balance should be achieved between meeting reserve requirements expeditiously while seeking to optimize the resource mix/portfolio." Yet the effect of a five year utility procurement authorization would be to create an inappropriate imbalance. As Commissioner Lynch observes in her alternate, the utilities' filed long-term plans did not accurately reflect the increasing volatility of natural gas prices:

> "Long-term plans should reflect the most recent fuel-price forecasts available at the time of the plans' preparation and should include fuel-price variation as an element of the plans. ORA and TURN raise an important issue regarding the use of forecast prices in long-term plans. Fuel prices are notoriously volatile, especially on a short-term basis. They vary with changes in the economy, changes in hydro conditions, changes in drilling and pipeline conditions. They vary for other reasons that are sometimes understandable only in retrospect if at all. We are not convinced that the actual degree of potential variation in fuel costs was reflected in the cost scenarios presented in the long-term plans. Therefore, we caution the utilities to consider seriously the degree of volatility that should be expected in fuel prices when developing high percentile scenarios for procurement costs particularly. We direct that future long-term procurement plans should reflect fully the expected range of fuel prices at least up to the 95th percentile of the expected distribution." (Lynch Alternate, V.A.2.)

In effect any multi-year power purchase of gas-fired generation is predictably going to inflict rate shock on ratepayers. To make matters worse, while such an increase would otherwise make other forms of generation such as wind power will become more price-competitive, 5 year contracts pre-approved pursuant to AB57 would eliminate the authority of the Commission to review contracts or

make changes in order to accommodate other power sources or providers. Ratepayers and the Commission could have their hands tied in yet another energy crisis.

Long-term contracts would not only tie the hands of the Commission in the next gas (and gas-fired generation) crisis: it would lock Californians into purchasing the gas-fired power no matter what the price. California's gas-fired power plants, which constitute the vast majority of generation available to utility procurement consume 42% of the natural gas consumed in California. Natural gas fuels43% of all in-state power plants, and constitutes the vast majority of the in-state generation available to current utility procurement. Therefore, any utility procurement contracts are very likely to be extremely volatile.

The writing is on the wall on the dangers of gas-related risk management, and it is should not comfort ratepayers that the right risk evaluation models would somehow suffice to fulfil the Commission's fiduciary responsibility to ratepayers. Indeed such an idea creates the appearance that more crises will soon be unleashed upon the residents and businesses of California. Just as the writing was on the wall in 2001 when Governor Davis was negotiating the Department of Water Resources (DWR) contracts, now it is just as clear that any multi-year contracts this Commission authorizes on December 18 would very likely cause a rate shock that could otherwise have been minimized with a shorter-term authorization followed by long-term fuel and market diversification. That is why respecting the RPS and encouraging Community Choice Aggregation are so critical to finding a way out of this mess,

In an effort to address the coming natural gas crisis, all three Decisions mention importing Liquefied Natural Gas as an "alternative fuel sources" that could improve the state's balance of energy resources:

> "Fuel diversity is not only a matter of choices of different fuels. The principal advantage we are looking for, reduced likelihood of shortages and price spikes, can be achieved through greater reliance on additional sources of fuel, including natural gas itself. It is possible that the addition of at least one Liquefied Natural Gas (LNG) port capable of serving gas to Californians, including California's electric power plants, can provide at least some of the benefit we are searching for in fuel diversity. Only in this case, it would not be diversity of the fuel types, but of the fuel sources." (Walwyn, November 18, p. 142)

This kind of reasoning concerns RAGE especially. Introducing foreign gas from Russia and the Middle East is the opposite of a solution to California's energy crisis. Indeed, our coalition fears that any multi-year electric procurement contract authorization will directly leverage financing and political support for the many onshore and offshore LNG terminals being proposed from Baja to Washington State. California's over-reliance on gas will not be solved by making California's electricity grid dependent on Middle East and Russian gas supplies. The Commission should take a lesson from the Iraq War and resist supporting dangerous, false and short-sighted solutions like LNG terminals on the California coast.

With the coming natural gas crisis so widely predicted, the Commission should not authorize putting the entire state economy on the hook for virtually 100% natural-gas fired power contracts from now until 2009. Again, no argument has been presented to justify the dangerous and unnecessary urgency of pre-approving a five year utility purchase. Indeed judge Walwyn observes that "almost all parties have indicated that there are ample amounts of resources available for California to meet its resource needs for 2004, thus providing the Commission a brief period to develop an optimal resource procurement strategy." (Walwyn, November 18, p. 25). The Commission should use the time it has rather than rushing ahead before it is ready.

C. Multi-Year Authorization Would Block San Francisco, San Diego and Other Cities From Lawfully Departing Utility Procurement and Developing Energy Efficiency and Solar Power. Whereas a one year authorization would leave the window open for San Francisco, San Diego and others to implement Community Choice within a reasonable time frame, a five year authorization would clearly prevent them from doing so.

AB117 provides for the coordination of Community Choice departures with utility procurement:

> 366.2 (c) 8 "The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission." (Ab117 - Chapter 838, p.6)

It follows that multi-year contracts authorized prior to the Commission's completion of Community Choice regulations would *a priori* restrict the ability of ratepayers to depart utility service. In AB117 the legislature clearly anticipated and prohibited utilities from blocking Community Choice Aggregation load departures:

> 366.2 (c) (9) "All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs" (AB117 - Chapter 838, p.6).

Clearly, the legislature intended Community Choice Aggregators to be allowed to exist prior to 2009, requiring the Commission to change its energy efficiency policies to accommodate Community Choice Aggregators in July, 2003[1] and requiring the Commission to report to the legislature on how many Californians are served by Community Choice Aggregators (among other details) in 2006.[2]

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[1]Section 381.1(a) of the Public Utilities Code (AB117 - Chapter 838, p.10)

[2]Section 366.2(j) of the Public Utilities Code (AB117 - Chapter 838, p.10)

While a significant number of California communities, including San Francisco, San Diego, Marin County and the Southern California Cities Joint Powers Consortium have made declarations fo intent to implement Community Choice, run energy efficiency programs and develop renewables, a multi-year contract authorization would clearly block them from finding competitive suppliers by creating new monopoly exit fees in addition to existing exit fees based on past DWR contracts. AB57 puts ratepayers on the hook for utility power contracts. 454.5 (d) of the Public Utilities Code reads:

> "A procurement plan approved by the commission shall accomplish each of the following objectives:
>
> > (3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan" (AB57- Chapter 835, p.5).

Thus, ratepayers wishing to switch from IOU procurement to an Electric Service Provider (ESP) following the pre-approval will likely be required to pay an exit fee to prevent cost-shifting. Section 366.2(f) of the Public Utilities Code reads:

> "A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section *shall reimburse the electrical corporation* that previously served the customer for all of the following:
> > (1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.
> > (2) *Any additional costs* of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, *for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation*." (AB117 - Chapter 838 of 2002, p.9)

Thus, any contracts authorized by the Commission will present new monopoly

exit fees in addition to existing DWR contracts, adding non-bypassable surcharge upon non-bypassable surcharge to every Community Choice Aggregation ratepayer's electric bill, and thus erecting a price barrier that will very likely prevent economic bypass, with ESPs bidding for a smaller portion of the ratepayer's electric bill, and with margins pushed below the economic bypass threshold, rendering California ratepayers captive to their electric monopolies again in violation of AB117.

It is well known that monopolies have used similar tactics to prevent economic bypass by their customers in virtually all electricity markets, including California, if they are allowed; it is the responsibility of this Commission to enforce AB117 by not allowing it, however.

Ignoring the Commission's responsibility to enforce and obey AB117, Judge Walwyn's Proposed Decision affirms an intention to impose non-bypassable surcharges for the five year utility contracts in order to force ratepayers to pay back their monopoly should they choose to depart for a Community Choice Aggregation. TURN, apparently concerned only with the fate of bundled customers, provides the justification:

> "TURN's proposal also realizes that the utilities (and their customers) should not subsidize ESPs. It therefore proposes a non-bypassable surcharge, as well as allowing ESPs who have acquired sufficient reserves to "opt-out" of paying this surcharge. We find merit in TURN's proposal as a mechanism that will allow the Commission to quickly address resource adequacy issues, maintain Commission jurisdiction, and retain flexibility for the Commission and Legislature to later adopt other approaches to address the reserve issue. In approving this approach we clearly see it as an approach to ensure reliability. Our hope is that all ESPs/community aggregators will voluntarily choose to provide their own necessary reserves. However, utility provision of these services is necessary to ensure reliable service. Both PG&E and SCE raise several valid implementation issues that must be addressed to adopt TURN's proposal. First, to avoid cross-subsidization issues, there needs to be a *nonbypassable surcharge so that all customers within the utility service territory pay their fair share of the costs of acquiring needed reserves.* Such a surcharge should be similar to the existing surcharges, already approved by the Commission such as SCE's Historic Procurement Charge (HPC) approved by D,02-07-032 and the Cost Responsibility Surcharge (CRS) approved by the

> Commission in D.03-07-030. (Emphasis added, Walwyn Proposed Decision, November 18, p. 37).

In this paragraph judge Walwyn (with TURN) discriminates against Community Choice Aggregation ratepayers by saying that "utilities (and their customers) should not subsidize ESPs" when in fact it is the ESP's customers who would inevitably pay the surcharge or be discouraged from leaving their monopoly procurement as a result of being forced to pay the surcharge. By thinking only of the welfare of captive customers, this kind of reasoning protects ratepayer captivity itself.

> "In establishing this surcharge we only seek to impose the same burdens and responsibilities upon ESPs to provide reliable service that we are imposing upon the utilities"

Yet the utilities' risks are being hoisted upon their ratepayers' backs, whereas ESPs will have to manage a far greater share of their own risks: a benefit to ratepayers that the monopolies will not offer. Moreover, by imposing new non-bypassable surcharges to secure the utilities' multi-year power contracts, the Commission would be imposing *a priori* barriers to Community Choice Aggregation, preventing AB117 from being implemented.

While it may be reasonable for the Commission to attach non-bypassable surcharges to provisional utility procurement and one-year contracts, the implications of imposing a five year non-bypassable surcharge are devastating for Community Choice Aggregators and should not be approved by the Commission.

The Commission is unprepared to proceed with a multi-year contract authorization, having given only speculative consideration to Community Choice Aggregation per AB117. As an example, Judge Walwyn indicates that "our hope is that all ESPs/community choice aggregators will voluntarily choose to provide their own necessary reserves":

> The workshops that we are convening to address resource adequacy, discussed further below, will be helpful in developing a template for determining how to evaluate an ESPs/aggregators' reserves. (Walwyn, November 18, p. 45)

This statement puts the cart before the horse again, as procedures related to Community Choice Aggregator reserves have in fact not been established in R.01-10-024; rather, it will be decided in the recently opened Community Choice Aggregation proceeding (R.03-10-003), which the Commission has waited a year to open since AB117 became law (the same day AB57 became law), and whose resource adequacy issues will be clarified during 2004.

Thus the Commission is not adequately informed about Community Choice Aggregation to make assumptions or rest on hopes about its implementation. Any multi-year electric utility procurement authorization would fail to meet the Commission's fiduciary responsibility to ratepayers seeking to implement Community Choice Aggregation pursuant to Chapter 838, and would leave the fate of their interests to speculation.

As any five-year monopoly exit fees could make it prohibitively expensive for ratepayers to choose Community Aggregation, it clearly falls within the Commission's fiduciary responsibility to ratepayers *not* to lock ratepayers into multi-year utility contracts, at least until an informed decision about the relationship between Community Choice Aggregation and utility procurement can be established.

Gas volatility, exit fees and ratepayer captivity are but examples of the perils of proceeding with long-term utility contracts before the Commission has completed its regulations on Community Choice Aggregation and the Renewables Portfolio Standard. The CPUC's policies regarding utility procurement and Community Choice Aggregation or ESP procurement must be consistent, complementary, even coordinated, as called for by 366.2 (c) (8) of the Public Utilities Code.

D. Multi-Year Authorization Would Subvert the Renewables Portfolio Standard Law

The Commission has not yet resolved major resource questions, including the feasibility of resource adequacy options, uniform forecasting methodologies, and Renewable Portfolio Standard benchmarks for competitive solicitation, rendering any authorization to the utilities to procure power for the next five years a subversion of the Renewables Portfolio Standard Law, SB1078.

Given the pre-approval terms of AB57, providing the utilities with procurement approval extending throughout the next five years without resolving the related statutory issues presented by the RPS, this Commission would be handing the utilities a pre-approved blank check for five years worth of procurement authority. We must grant the utilities the authority to continue purchasing but we must complete the outstanding long-term issues before we can grant the utilities authority to buy for the long term.

The Commission will receive additional clarity on RPS solicitation guidelines during 2004, giving the utilities more certainty in their planning process and allowing the Commission to more accurately assess and evaluate the utilities' long-term plans, ensuring that the plans implement the Commission's broad policy goals about resource loading that will ultimately determine the success of the RPS law.

Implementation of RPS has occurred through a separate workshop process. D.03-06-071 addressed the RPS issues needing to be decided by June 30, 2003 and directed that a new docket be opened to continue with implementation requirements. As these proceedings are ongoing and the establishment of RPS benchmarks as directed by SB 1078 are a precursor to the approval of long-term procurement plans, it is critical that multi-year procurement contracts not be

authorized before the implementation requirements are completed.

What is worse, as observed by Commissioner Lynch, the utilities did not provide a robust analysis of future renewables supply growth in the renewables sections of their respective 2004 and long-term plans. At the time the utilities prepared their filings, RPS program development was in progress and the Commission had yet to issue and adopt D.03-06-071.

The IOUs will file separate renewable procurement plans pursuant to Pub. Util. Code § 399.14(a)(3), thus the 2004 and long-term procurement plans currently under consideration do not constitute a filing of the required renewables plans.

Thus, the Commission's approval of the 2004 procurement plans today does not "trigger" an RPS solicitation as detailed in D.03-06-071. An RPS solicitation requires further development of RPS criteria, such as the Market Price Referent , additional least-cost and best-fit evaluation criteria, and standard contract terms and conditions.

E. Multi-Year Authorization Would Block Wind Power Development and Threaten Existing Wind Farms. By also deferring transmission planning before five years' of power contracts are pre-approved, the CPUC's approval of the AB57 contracts would discriminate against new and existing wind power developments at the very time that the Renewables Portfolio Standard Law would require the Commission to fully integrate wind power into its transmission planning.

F. Multi-Year Authorization Would Create Ratepayer Captivity in Dirty Power Plant Contracts. Seventy-eight percent of California's natural gas power plants are more than 30 years old. These dirty, pollution generating power plants use twice the natural gas that newer fossil fuel plants would use, effectively

locking California into a vicious cycle of relying on dirty energy sources and at the expense of meeting California's energy efficiency and renewables goals.

G. Multi-Year Authorization Would Violate CPUC and Governor Schwarzenegger's Energy Policies. Governor Schwarzenegger as well as the PUC's own Energy Action Plan advocate the state of California reach a goal of 30% renewables by 2017 and yet the PUC has not implemented the tools to make this happen.

IV. Analysis of the Impacts of a One Year Authorization Pursuant to AB57

A. No Negative Impact of Continuing On a Year to Year Basis. Year to year utility electric procurement is relatively successful, and the argument that better prices would be obtained from long-term contracts is academic if compared to the price volatility to which such contracts would expose customers.

B. Commissioner Lynch's Alternate Decision is the Reasonable Move. Commissioner Lynch is presenting an alternate decision in the Procurement case that will give the utilities the ability to purchase electricity for the next year, allowing sufficient time to implement guidelines long overdue for Renewables and Community Aggregation. Confirming a one-year plan to fill in the little unmet power needs for 2004 will not affect or hinder renewables development. Consequently, there would be no disruption of procuring power for California and the PUC would be forced to finally fulfill its obligation to create guidelines in the other proceedings that would allow California utilities to produce a balanced portfolio that is responsive to state law, PUC goals, and the most benefits the citizens of California.

C. Time to Complete Regulations for RPS and Community Choice. Within a one year procurement authorization through 2004, the Commission will have ample time to complete its RPS and Community Choice regulations so that the utility procurement is authorized in a manner that allows for the implementation of these two laws.

V. Rate-Basing Utility Power Plant Acquisition

For similar reasons to our reasoning in opposing long-term contracts, we urge the Commission not to allow direct utility ownership of new power plants. In its April 15, 2003 long-term plan filing, PG&E provided a cost-recovery mechanism proposal for utility ownership of new plant, and proposed the Commission adopt a traditional cost of service ratemaking methodology for utility constructed and owned generation.

Since then, the other states have followed PG&E's lead. SDG&E made proposals to purchase and own new power plants, and on July 21, 2003, Edison filed an application for approval of the Mountain View project, a power plant of 1,000 MW capacity that would be owned by a wholly-owned subsidiary of SCE. On October 7, 2003, SDG&E filed a motion in the instant proceeding that would, if granted, result in ownership of the Palomar project, a 500 MW generation plant to be constructed for its eventual ownership and control. SDG&E's motion also includes a proposed purchase power agreement (PPA) for the output of the to-be-constructed 500 MW Otay Mesa project and several other smaller PPA contracts.

While supporters of utility ownership of utility acquisition or new power plants justify their position by saying that market generators holding permits to build new plants are in severe financial distress and cannot continue construction without long-term supply contracts with the utilities or other load serving entities,

this argument is as short-sighted as authorizing long-term contracts. Putting ratepayers on the hook for new power plants is a dangerous way to underwrite new gas-fired power plants, presenting an even greater risk of stranded costs than would be presented by five year power purchase agreements. Finally, the "other load serving entities" awaited by permit holders will emerge once the Commission completes its regulations for Community Choice Aggregation. Expiring gas plant permits do not justify an urgent rush to allow monopolies to build power plants at ratepayer expense.

VI. Conclusion

We urge the Commission to approve Commissioner Lynch's Alternate Decision's provisions establishing an appropriate order that respects all 2002 laws of the legislature relating to the procurement of electricity in California:

> "Given the operation of recently enacted legislation providing pre-approval of purchasing plans, AB 57 (Wright, 2002) providing the utilities with procurement approval extending throughout the next five years without resolving the concomitant statutory issues and policies in AB 117 (Migden, 2002) and SB 1078 (Sher, 2002), this Commission would be handing the utilities a pre-approved blank check for five years worth of procurement authority. We must grant the utilities the authority to continue purchasing but we must complete the outstanding long-term issues before we can grant the utilities authority to buy for the long term" (Lynch Alternate, December 5, Summary).

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 December 8, I caused service of :

COMMENTS OF RATEPAYERS FOR AFFORDABLE GREEN ENERGY ON ADMINISTRATIVE LAW JUDGE WALWYN'S PROPOSED DECISION (MAILED NOVEMBER 18), ASSIGNED COMMISSIONER PEEVEY'S ALTERNATE DECISION (MAILED NOVEMBER 18) AND COMMISSIONER LYNCH'S ALTERNATE DECISION (MAILED DECEMBER 5)

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 8th day of December, 2003.

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Courtesy Hard Copies Served:

1. President Peevey
2. Commissioner Wood
3. Commissioner Kennedy
4. Commissioner Brown
5. Commissioner Lynch
6. Administrative Law Judge Walwyn
7. Julie Fitch, advisor to President Peevey
8. Manual Ramirez/Steve Weisman, advisors to Commissioner Wood
9. Brian Prusnek, advisor to Commissioner Kennedy
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11. Aaron Johnson, adcisor to Commissioner Lynch

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