If an electric utility asks regulators to approve a contract to purchase power from someone else's power plant, should the regulators consider the environmental implications before saying yes or no? Of course they should. But let me ask the question again, using a bit of California legalese: Does a decision by the California Public Utilities Commission (CPUC) to approve or reject a Power Purchase Agreement between a utility and a third-party supplier trigger environmental review under the California Environmental Quality Act (CEQA)? Apparently, the CPUC doesn't think so, since it regularly approves or rejects such agreements without CEQA review.

The CPUC has a long history of side-stepping CEQA, even when making multi-billion dollar decisions that will affect air quality, water quality, public health, and global climate. It can to this because…well, because it does it and no one usually stops it. That is one of the factors that led to the creation of the California Energy Commission, an entity with a clear mandate to look at proposed new power projects in a balanced way – through comprehensive forecasting and planning, and accompanied by environmental analysis at least as rigorous as that required by CEQA. The Energy Commission steps in whenever a power plant proposed for construction in California would use heat to make electricity and would have a capacity equal to or greater than 50 megawatts. That's great, except for the fact that in 1999, the California Legislature decided that the Energy Commission should no longer consider the need for a new plant when deciding whether or not to certify its construction. The rationale is that "the market" would determine if the plant is needed. If no one wants to buy what it delivers, then the plant isn't needed — so much for planning, and so much for considering the full implications of building the plant. Need becomes a critical factor in determining whether there are environmentally preferable ways to obtain the same results. Without identifying need, it is hard to consider better ways to meet the need.

So, the plant won't be built (or if already built, won't be used) unless "the market" sees a need. In California, "the market" is almost always the state's regulated utilities, and they won't buy unless the CPUC says it is OK. Roger Johnson, the Deputy Director of the Energy Commission's siting division, recently told California Energy Markets that since 2001, his agency has certified 13 power plants that haven't been built because their sponsors were unable to obtain long-term power purchase agreements. "In effect," he said, "the market determined there was no

need for the power plants…”

Does the CPUC’s discretionary act of approving or rejecting a Power Purchase Agreement have environmental import? Of course it does. A new “cleaner” natural gas plant might replace an older dirtier one. Or it might displace even cleaner renewables. Or, despite its other merits, the plant’s construction could destroy critical habitat or overly strain limited water sources. It might contribute to degradation of local air quality or blight a scenic view; introduce unhealthy noise levels, or interfere with sites of great historical value. It might reduce overall greenhouse gas emissions, or unnecessarily increase them.
None of these impacts would occur if the plant isn’t built and, as Roger Johnson points out, it won’t be built if no one will buy the power. The utilities are the major buyers in California, and they won’t bite unless the CPUC approves. That discretionary approval triggers environmental effects, good or bad.

In past situations, some at the CPUC have argued that the Energy Commission or other entity certifying construction must address those issues (implying that this makes CPUC review unnecessary). This argument ignores the law. Under CEQA, a Lead Agency prepares an environmental impact analysis. But this doesn’t let other deciders off the hook. Other agencies with discretionary authority related to the project become Responsible Agencies and they also must consider environmental implications before acting. And if the existing analysis is incomplete for their purposes (by, for instance, not considering the need for the project), the Responsible Agencies have to fill in the gaps. Without taking on this obligation, it is less than clear that a Responsible Agency is acting responsibly.