

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine  
Procurement Policies and Consider Long-Term  
Procurement Plans.

Rulemaking 10-05-006  
(Filed May 6, 2010)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON  
THE PRELIMINARY SCOPING MEMO**

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In accordance with the Order instituting this rulemaking, the Independent Energy Producers Association (IEP) submits its comments on the Preliminary Scoping Memo and Schedule for this proceeding.

**I. INTRODUCTION**

This proceeding provides parties with the first opportunity to address procurement issues, especially policy issues, in three years. The Preliminary Scoping Memo identifies many of the issues that need to be considered in this proceeding, and IEP will accordingly limit its comments to an identification of additional issues or questions that deserve consideration and resolution by the Commission in this proceeding.

**II. TRACK I AND TRACK II**

The Preliminary Scoping Memo proposes separate consideration of the systemwide resources needed to meet all of the load located within the service territories of the investor-owned utilities (IOUs), including direct access (DA) and community choice aggregation (CCA) loads not served by the IOUs. Clearly distinguishing this system resource plan (Track I) from the procurement plan (Track II) for resources needed to meet the bundled load of the IOUs will help eliminate some of the confusion between these two different plans that complicated the

2006 long-term procurement plan (LTPP) proceeding.

However, the Preliminary Scoping Memo includes an assumption that Track I should focus only on the Commission-jurisdictional need for *new* resources to meet system or local resource adequacy requirements. In IEP's view, this assumption oversimplifies the analysis that should be performed and fails to ask key questions, leading to a result that could have several unintended consequences, including higher procurement costs for ratepayers. Track I should proceed methodically to consider several questions for the 10-year period covered in this proceeding:

- ffi What is the forecasted demand in the IOU's service territory, including the load of IOU customers, DA, and CCA?
- ffi What is the level of committed existing resources, including generation resources owned by IOUs, Energy Service Providers (ESPs), or CCAs, generation resources contracted for by IOUs, ESPs, or CCAs, demand response, and energy efficiency?
- ffi What is the level of existing resources that are *uncommitted* for all or a part of the forecast period?
- ffi What is the capacity of existing resources that will retire during the forecast period?

By focusing only on the need for *new* resources in Track I, the Preliminary Scoping Memo appears to make the unsupported assumptions that (1) existing but uncommitted resources will continue to operate and (2) retirement decisions will not be affected by procurement opportunities. What Track I should recognize and account for is that uncommitted resources can and should compete with proposed new resources to fill system needs. System

needs can be met by retaining existing resources in operation, not just by adding new resources. If the selection of a new 250 MW resource results in the premature retirement of a less expensive existing 250 MW resource, the net result is not additional capacity, only higher costs for ratepayers.

The development of the Track I resource plan must consider the contribution that existing resources can make toward meeting forecasted demand. But uncommitted existing plants will be able to make that contribution only if they have a reasonable opportunity to secure the revenues needed to cover their costs. Put differently, the line between uncommitted existing plants and retirements is a fluid one, and individual units will move back and forth across that line depending on whether they have a reasonable prospect of recovering revenues that cover the cost of continuing in operation.

To ensure that viable existing plants are not prematurely forced into retirement, any procurement authorized to meet forecasted system need should be open to new *and* existing resources. Retaining existing plants that can compete economically with new generation will result in a more efficient and less expensive resource plan with less environmental impact. Categorically excluding existing plants from bidding in a solicitation to meet system needs will result in the unnecessary premature retirement of plants that can offer many more years of low-cost service.

### **III. TRACK III—POLICY ISSUES**

Some of the policy issues that are designated for resolution in Track III are of particular interest to IEP, and IEP offers the following comments on these policy issues.

#### **A. Once-Through Cooling**

The Preliminary Scoping Memo properly includes issues related to the restrictions on use of once-through cooling (OTC) for power plants. The treatment of OTC plants can

largely be resolved by allowing them the option of competing with new generation resources to meet the system need identified in Track I, as discussed above. Confronted with restrictions on OTC, existing plants that rely on OTC will either retire or make the additional investments required to operate in compliance with those restrictions. Plants that choose to make those investments should be provided a fair opportunity to compete for contracts to meet the needs identified in the Track I resource plans and Track II procurement plans.

In the last LTPP proceeding, the IOUs and the Commission assumed that essentially all plants relying on OTC would be retired on a precipitous schedule. That assumption was simplistic and failed to consider the possibility that some OTC plants could make economic investments that allow them to remain in operation. As the regulations relating to OTC have developed, some plants have retired or are planning to retire, while others are finding ways to comply with the OTC requirements and continue operating. For those plants that plan to retire, this proceeding should examine the effect of those retirements on reliability, especially local area reliability, and whether existing incentives are sufficient to allow for an orderly replacement of that retired capacity. For those plants that plan to continue in operation, this proceeding should ensure that they have a fair chance of competing for power purchase agreements (PPAs) in open and transparent competitive solicitations and are not arbitrarily excluded from participating in a solicitation.

**B. Refinements to Bid Evaluation**

IEP agrees with the Preliminary Scoping Memo's recognition of the need to "ensure that the bid evaluation process is fair, just and reasonable, and include the need to determine whether and how bid criteria can be developed to improve head-to-head comparisons of UOG [utility-owned generation] and IPP bids." IEP urges the Commission to give this issue high priority. IEP raised the need for a fair and transparent bid evaluation methodology in the

last LTPP proceeding, and although the Commission acknowledged this issue, it was relegated to Phase II and never addressed. In the meantime, in the absence of the Commission's action, this issue has arisen repeatedly whenever UOG projects have been proposed, *e.g.*, Gateway, Colusa, UOG photovoltaic projects, Oakley.

In addition to the issues listed in the Preliminary Scoping Memo, IEP offers the following points for the Commission's consideration:

- ffi The methodology often used to compare bids for commitments of different durations is flawed, particularly when the comparison is between UOG units with an assumed useful life of 30 years and a PPA with a ten-year term. A comparison of commitments of different durations requires that the alternative be completely specified. In the example of a comparison between a 30-year UOG commitment and a ten-year PPA, the analysis must identify what steps the utility would take to meet the 30-year need the UOG is intended to fill if the utility instead chose the ten-year PPA; in other words, how would the 30-year need be met for the 20 years after the PPA expires? Unless the options for the additional 20 years are identified and quantified, the comparison will be distorted.
- ffi A related point is that an independent power producer with a ten-year PPA is forced to recover all of its capital costs in the first ten years of the plant's operation because, unlike the regulatory treatment of UOG, the current market structure does not provide a mechanism for recovering capital costs in the latter two-thirds of the plant's useful life. To remedy this disparity, the Commission should consider offering longer-term PPAs, allowing existing

units to bid in competitive solicitations to meet system need, or increasing the payments for Resource Adequacy capacity to reflect the true cost of capacity. At a minimum, in comparisons between PPAs and UOGs, the Commission should recognize that PPAs provide the significant benefit of supplying energy to the market (and to ratepayers) in years 11-30 at prices that do not include recover of capital costs.

- ffi Comparisons that are determined by assumptions about the later years of the commitment, *i.e.*, years 11-30, must be examined closely and critically. Key assumptions about conditions in these later years, *e.g.*, that prices in available markets will converge on the cost of building new generation (despite policies with the intended or unintended effect of keeping market prices low) can greatly distort the comparison.
- ffi The bid evaluation process and methodologies must be much more open and transparent. While the Procurement Review Groups and Independent Evaluators have provided a useful check on the utilities' procurement activities, they have not focused on the potential flaws in the IOUs' analyses and comparison methodologies. The recent Replacement Proposed Decision in the application of Pacific Gas and Electric Company (PG&E) for approval of the results of its 2008 Long-Term Request for Offers (A.09-09-021), for example, revealed that PG&E's evaluation process relies on weightings of bid evaluation criteria that greatly undervalue certain criteria and presumably overvalue others, and that some projects with lower aggregate scores were

shortlisted while higher-scoring projects were not.<sup>1</sup> Those weightings and decisions, however, have never been discussed or validated in any public setting, casting doubt over the entire procurement process. In fact, the Replacement Proposed Decision includes a finding that “PG&E made some decisions at key junctures in the RFO process that may have dictated the outcome of the process, for which it provided no explanation of, nor rationale.”<sup>2</sup> While the Commission has not yet decided whether to adopt the Revised Proposed Decision, these proposed findings appear to confirm that at least PG&E’s evaluation process operates far differently from what has been presented in public information.

ffi The UOG-PPA comparison should reflect all of the costs of developing, permitting, constructing, and operating a generating unit. The Scoping Ruling mentions some of these costs, including bid development and greenhouse gas (GHG) compliance costs, but a fair evaluation should include other areas where ratepayers directly or indirectly subsidize UOG for costs that must be reflected in the bid of a PPA. A failure to recognize and properly value these costs will tilt the bid evaluation and comparison in favor of UOG projects.

**C. Confidentiality Issues**

The Preliminary Scoping Memo states that issues related to confidentiality will be addressed in R.05-06-040, where the Commission has considered confidentiality issues in the procurement context. Because the Commission’s confidentiality rules were created to apply in

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<sup>1</sup> Replacement Proposed Decision, A.09-09-021, pp. 17, 49 (Finding of Fact No. 7).

<sup>2</sup> Replacement Proposed Decision, p. 49 (Finding of Fact No. 6).



the procurement context, however, it is impossible to consider procurement without confronting confidentiality issues. For example, as the discussion above illustrates, IEP believes that the Commission's procurement proceeding should be as transparent as possible. Transparency is limited by confidentiality, and IEP and others must be permitted to explain how the confidentiality rules make transparency impossible.

Moreover, excessive claims of confidentiality have prevented an open discussion of key issues in the procurement proceeding. IEP and others got a glimpse behind the shroud of confidentiality when the Replacement Proposed Decision was issued in A.09-09-021, mentioned above. Although IEP has participated extensively in the last two LTPPs, IEP learned for the first time in the Replacement Proposed Decision that PG&E relies on weightings of bid evaluation criteria that greatly undervalue certain criteria and presumably overvalue others, and that some projects with lower aggregate scores were shortlisted while higher-scoring projects were not.<sup>3</sup> The Preliminary Scoping Memo properly identifies refinements to bid evaluation in competitive solicitations as one of the issues in this proceeding, and IEP and others should be able to follow up on the revelations of the Replacement Proposed Decision in this proceeding without confronting excessive claims of confidentiality.

IEP also cautions that long-term planning assumptions are based on forecasts that have little validity after two to three years. As IEP pointed out in the confidentiality proceeding,

To be blunt, a forecast would have to be exceptionally accurate to justify protection for more than three years. Did the utilities' forecasts of gas prices in 2002 accurately predict the increases we have seen since then? We may never know, because the forecasts are confidential, but few three-year-old forecasts have value for being anything more than an historical curiosity. Even for variables that are more stable than the price of natural gas, such as load growth, utilities and others were surprised in the last few

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<sup>3</sup> Replacement Proposed Decision, A.09-09-021, pp. 17, 49 (Finding of Fact No. 7).

years by increases in load growth resulting from a more vigorous economy.

The point is simply this: forecasts lose their value as time passes, because events never quite turn out as expected.<sup>4</sup>

This statement, presented in February 2006, demonstrates how quickly forecasts and fundamental assumptions about the future can change. Since that time, gas price forecasts have declined again, and the recent recession appears to have put a damper on load growth, even when the effects of cool summers are taken into account.

For these reasons, the Commission ensure that any claims of confidentiality are consistent with the decisions issued in R.05-06-040. In particular, the Commission should require the IOUs to be forthcoming about their bid evaluation practices and be extremely skeptical of any claims that confidential treatment of long-term forecasts beyond two or three years is necessary. One of the critical effects of a lack of transparency in planning is that it limits the ability of non-utility competitive suppliers to take the important early steps of planning, procuring, siting, and permitting resources to meet California's needs. Ultimately, this inability to take these crucial early steps leads to higher development costs, which means that consumers risk paying more than should be necessary to meet their grid reliability and resource policy needs.

**D. The Need for Realistic Forecasts**

Resource planning in California has long been plagued by forecasts that are colored to reflect certain policy choices. That is, forecasts may tend to incorporate the hoped-for result of a particular policy, regardless of whether that result is likely to occur in the real world. One of the primary risks associated with resource planning is that an IOU will underestimate its

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<sup>4</sup> Opening Brief of the Independent Energy Producers Association, R.05-06-040, Feb. 6, 2006, pp. 33-34.

need (residual net short or RNS), leading to pre-emptive action to obtain additional resources when demand rises more quickly than expected. This pre-emptive action typically bypasses the competitive processes that the Commission has carefully established and frequently leads to the development of UOG without any competitive process to determine if less-expensive solutions are available. This risk can arise from overoptimistic forecasts of energy efficiency and demand response or from a failure to recognize demand growth trends, among other factors.

The risk of underestimating need arises in large part because the procurement process lacks transparency. Greater transparency would allow market participants to identify where the gaps in the resource planning process exist and to take steps to fill the gaps by anticipating future need.

**E. Priority for Addressing Issues**

The Scoping Ruling invites parties to comment on which issues must be resolved before the initiation of Phase II. From IEP's perspective, the issues related to bid evaluation and the comparison between UOG and PPAs deserve high priority. These issues should have been addressed long ago, and they should be addressed and resolved before the initiation of any procurement process that might include proposals for UOG projects. The question of the treatment of OTC plants and their replacements clearly must be resolved before a bundled (or system) procurement plan is adopted.

**IV. CONCLUSION**

IEP appreciates the chance to present these comments for the Commission's consideration. IEP urges the Commission to carefully consider the issues IEP has identified in these comments, particularly the issues relating to the comparisons between UOG and PPAs with independent power producers. Over the last three years, while the Commission has deferred its resolution of these comparison issues, the IOUs have proposed and received approval for several

large UOG facilities, and the Commission's inaction has left ratepayers and potential developers of new generation with significant doubts about whether the best, least-cost projects were selected. IEP looks forward to the opportunity to represent the perspectives of independent generators on these and other issues in this proceeding.

Respectfully submitted this 4th day of June, 2010 at San Francisco, California.

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**CERTIFICATE OF SERVICE**

I, Melinda LaJaunie, certify that I have on this 4th day of June 2010 caused a copy of the foregoing

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION ON THE PRELIMINARY SCOPING MEMO**

to be served on all known parties to R.10-05-006 & R.08-02-007 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of June 2010 at San Francisco, California.

*/s/ Melinda LaJaunie*  
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