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)

MOTION OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION FOR EXPEDITED DETERMINATION OF ISSUE

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The *Joint Administrative Law Judges' Ruling Clarifying Venue for Consideration of Costs Related to Procurement of Greenhouse Gas Allowances,* issued on August 4, 2011 (*Ruling*), clarified the venue for consideration of certain issues related to the procurement of generation resources that emit greenhouse gas (GHG) and the need to obtain GHG emission allowances for operation of those resources under the cap and trade provisions of Assembly Bill (AB) 32, as implemented by the California Air Resources Board (CARB). In particular, the *Ruling* clarified that issues related to GHG risk management and procurement and compliance costs would be addressed in this proceeding, rather than in Rulemaking 11-03-012, the proceeding on the utility cost and revenue issues associated with GHG emissions.[1]

Some of these issues were already within the scope of Track III of this proceeding and were addressed in testimony served on July 1 and August 4, 2011. The scope of Track III, however, did not include one issue of critical importance to some independent power producers (IPPs) that provide power to the utilities under power purchase agreements (PPAs). Certain IPPs

[1] *Ruling*, p. 6.

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entered into PPAs with utilities before AB 32 was enacted, and the PPAs do not include, and have not been amended to include, mechanisms to cover the cost of complying with the cap and trade provisions of CARB's regulations implementing AB 32. The *Ruling* stated that "GHG compliance costs associated with contracts executed between independent generators and utilities prior to the passage of AB 32, which do not provide for pass-through of such costs, would be more appropriately addressed in [a long-term procurement plan (LTPP)] proceeding."[2]

Because the *Ruling* was issued on the same day that intervenor testimony on Track III issues was due (and over a month after the utility testimony on these issues was due) in the LTPP proceeding, it was impossible for parties to address this issue during the recent hearings. The *Ruling* offered no guidance on when this issue would be taken up in the current LTPP proceeding.

In a related development, the Settlement Agreement approved in Decision 10-12-035 has been challenged, and the effective date of that settlement has been delayed. The delay in the effectiveness of the Settlement Agreement and the risk that the Settlement Agreement may never become effective due to litigation means that certain Qualifying Facilities may remain subject to contracts signed before the passage of AB 32 that do not cover the costs of complying with CARB's regulations and that result in payments that may be inconsistent with avoided-cost principles adopted in the Public Utility Regulatory Policies Act of 1978 (PURPA).

Many parties had expected that CARB would address the issue of pre-AB 32 contracts without a means of GHG compliance cost recovery as part of its current development of the regulations on the cap and trade program. However, the most recent revisions to the

[2] *Ruling*, p. 2. Some of the potential ways to address this issue seem to fall more directly within the scope of R.11-03-012, the GHG proceeding, but IEP accepts the *Ruling's* statement that the administrative law judges in both proceedings and the Energy Division staff will coordinate their efforts to ensure that these issues are timely resolved, in one proceeding or the other.

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proposed regulations make no attempt to address this issue, and because the regulation development process is nearing an end, it appears that this issue will not be resolved through CARB's regulations.

Even though CARB has deferred the effectiveness of covered entities' compliance obligation under the proposed cap and trade regulations until January 1, 2013, the auctions of GHG emission allowances will begin in the second half of 2012. Thus, by no later than the second quarter of 2012, the affected IPPs must decide whether and to what extent they must obtain GHG emissions allowances in the auctions. That decision, in turn, must be informed by a clear understanding of whether and how the affected generators can comply with the CARB regulations and remain in operation after the compliance obligations take effect on January 1, 2013.

In terms of the Commission's procedures, the second quarter of 2012 is just around the corner. The time required to address this issue, prepare and circulate a proposed decision, comment on the proposed decision, and receive the Commission's approval will consume a minimum of four to six months. Thus, it is critical for the Commission to begin the process leading to a decision on this issue as soon as possible.

For these reasons, the Independent Energy Producers Association respectfully asks the Commission to set a schedule for an expedited determination of the treatment of GHG compliance costs associated with contracts executed between independent generators and utilities prior to the passage of AB 32 that do not include a mechanism for recovery of such costs.

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Respectfully submitted this 23rd day of September, 2011 at San Francisco, California.

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