

**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.

Filed Public Utilities Commission
May 6, 2010 San Francisco, California
Rulemaking 10-05-006

**COMMENTS OF THE WESTERN POWER TRADING FORUM ON THE MOTION OF
THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION**

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Pursuant to the Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission, the Western Power Trading Forum (“WPTF”)¹ submits the following comments on the September 23, 2011, Motion of the Independent Energy Producers Association for Expedited Determination of Issue (“IEP Motion”). WPTF supports the IEP Motion and urges the Commission to adopt the recommendations contained therein.

I. PROCEDURAL BACKGROUND

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”). The Ruling clarified that issues related to GHG risk management and procurement and compliance costs

¹ WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

would be addressed in this docket, rather than in Rulemaking 11-03-012, the proceeding on the utility cost and revenue issues associated with GHG emissions.²

II. DESCRIPTION OF ISSUE

As noted in the IEP Motion, certain of these GHG-related issues were already within the scope of Track III of this proceeding, as addressed in testimony served on July 1 and August 4 of this year. However, the scope of Track III did not include an issue of significant importance to certain independent power producers (“IPPs”) that sell power pursuant to power purchase agreements (“PPAs”) executed with investor-owned utilities (“IOUs”). Some of those PPAs were entered prior to the passage of AB 32, meaning that they do not include contractual provisions to cover the cost of complying with the cap and trade provisions of CARB’s regulations implementing AB 32. The Ruling noted above cited this fact and 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.”³

IEP also notes that since 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, parties could not address this issue during the recent LTPP hearings. Furthermore, the effective date of the Settlement Agreement approved in Decision 10-12-035 has been delayed, meaning that certain Qualifying Facilities (“QFs”) could remain subject to contracts signed before the passage of AB 32. These PPAs are silent with respect to the costs of complying with CARB’s regulations and therefore may result in payments inconsistent with avoided-cost principles adopted in the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

² *Ruling*, at p. 6.

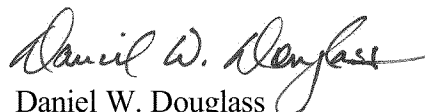
³ *Id.*, at p. 2.

Finally, the IEP Motion notes that the latest version of the CARB implementing regulations also does not address this issue. Since the auctions of GHG emission allowances will begin in the second half of 2012, the affected IPPs must make informed decisions regarding their need to obtain GHG emissions allowances in the auctions. This will require a clear understanding of how compliance with the CARB is to be achieved so that they may continue to operate after the compliance obligations take effect on January 1, 2013. The IEP Motion therefore concludes that, “it is critical for the Commission to begin the process leading to a decision on this issue as soon as possible.”⁴

III. WPTF SUPPORTS THE IEP RECOMMENDATION THAT THE COMMISSION ACT ON THIS ISSUE AS QUICKLY AS POSSIBLE.

The IEP Motion 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.”⁵ WPTF concurs with this request. This issue needs to be resolved expeditiously in order that affected IPPs can make informed decisions to comply with the forthcoming CARB regulations.

Respectfully submitted,



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⁴ IEP Motion, at p. 3.

⁵ Ibid.