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 (May 6, 2010)

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION ON TRACKS I AND III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING

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Dated: March 12, 2012

THE INDEPENDENT ENERGY PRODUCERS ASSOCIATIONS' RECOMMENDED CHANGED TO THE PROPOSED DECISION

IEP recommends that the PD should be revised to make the following changes:

- reflect that parties to the Track I settlement agreed only that the modeling results did not demonstrate whether or not there was a need for new capacity during the planning horizon.
- include an examination of the issues of need and contracting practices in a new phase of the existing proceeding.
- include a consideration of Calpine's and SCE's proposals and other proposals in a new phase of the existing proceeding.
- require procurement of additional resources to follow the framework for bid evaluation and resources selection that IEP proposed.
- remove unnecessary restrictions on procurement from Once-Through Cooled units and authorize utilities should to enter into contracts to procure the output of OTC plants to meet resource or grid reliability needs as long as and to the extent that the plants comply with the policies and rules of the State Water Resources Control Board.
- clarify that build-own-transfer or turnkey proposals and proposals to transfer ownership to the utility at the conclusion of the contract term are utility-owned generation and are subject to the same limitations as UOG plants initially constructed by the utility.
- require identical levelization periods for UOG and power purchase agreements for evaluation purposes.
- allow UOG projects to be re-priced only before the issuance of the CPCN.
- require the utility to file an application, rather than an advice letter, seeking the Commission's confirmation that its RFO was a failed RFO.
- accept IEP's model for making comparisons between UOG and IPP projects and make updates and revisions as needed, so that the comparison methodology is available if and when a UOG application comes before the Commission for review.

- grant IEP's Motion for Expedited Determination of Issue and state unequivocally that if renegotiation fails to resolve this issue within 60 days, the Commission will act to set aside allowances from the pool of allowances freely allocated to the utilities to compensate them for these costs and will develop a means to transfer the allowances to the affected generators who are unable to operate without such allowances. Alternatively, state that the utilities will be required to reserve some of the auction revenues they receive from selling allowances to compensate the affected generators.

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COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION ON TRACKS I AND III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING

The Independent Energy Producers Association (IEP) submits its comments on the Proposed Decision (PD) of Administrative Law Judge Peter Allen on Track 1 and Track III of this long-term procurement plan (LTPP) proceeding.

I. TRACK I ISSUES

The PD recommends approval of the Track I settlement entered into by many of the parties to this proceeding. While the settlement is largely unobjectionable,[1] the PD errs in (1) its description of the settlement's specific conclusion on the need for additional resources and (2) its failure to define the procedure to address some key issues that the settlement deferred and to set the framework for the evaluation of those issues.

A. The PD Overstates the Settlement's Conclusions on the Need for Additional Resources

The Track I settlement, which the PD succinctly describes as "a punt,"[2] addressed the issue of the need for additional resources over the 10-year planning horizon with language carefully crafted to attract the support of parties representing a variety of interests. The key language on system need is:

[1] IEP did not join in the settlement, but did not oppose approval of the settlement.
[2] PD, p. 5.

> The resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020, the period to be addressed during the current LTPP cycle. The Settling Parties have differing views on the input assumptions used in, and conclusions to be drawn from the modeling. There is general agreement that further analysis is needed before any renewable integration resource need determination is made.[3]

On Local Area need, the settlement recites that "SCE's analysis of its [local area] need is inconclusive," and since neither Southern California Edison Company (SCE) nor Pacific Gas and Electric Company (PG&E) requested authority to procure new local resources, "The Commission does not need to authorize procurement authority relating to local capacity requirements for SCE's and PG&E's service areas at this time."[4]

In the course of examining whether the settlement is reasonable in light of the whole record, the PD states, "it would be reasonable to find that there is no need for additional generation by 2020 at this time, and accordingly it is reasonable to defer authorization to procure additional generation based on system and renewable integration need."[5] A footnote similarly states that "it is also reasonable to defer procurement of generation for any estimated need after 2020,"[6] a conclusion that extends beyond both the terms of the settlement and the scope of this proceeding. The concluding passage of this section of the PD contains similar statements: "deferring procurement of new generation will not cause a problem,"[7] and "the record clearly supports a conclusion that no new generation is needed by 2020."[8]

These statements go well beyond the carefully worded provisions of the settlement. The settlement was explicitly agnostic about the need for additional generation, stating only that the analyses presented in the proceeding, using assumptions that not all parties supported, did not demonstrate *whether or not* there was a need for new capacity, and that further analysis was needed before any conclusion could be drawn about the need for new capacity. If the settlement had unequivocally concluded that no need existed through 2020, IEP, which

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[3] Settlement Agreement, p. 5.
[4] Settlement Agreement, p. 7.
[5] PD, p. 9.
[6] PD, p. 9, fn.9.
[7] PD, p. 10.
[8] PD, pp. 10-11.

neither supported nor opposed the settlement, would have been compelled to oppose approval of the settlement.

The PD should be revised to reflect the provisions of the settlement more accurately. The PD's conclusion should reflect the ambiguous results of the resource analyses, and not leap to an affirmative finding that capacity is not needed for local reliability or renewables integration purposes.

B. The Additional Studies Called for in the Track I Settlement Should Be Considered in a New Phase of This Proceeding

The Track I settlement calls for additional studies to resolve the question of whether or not additional resources are needed. Specifically, the settlement noted that the California Independent System Operator (CAISO) would complete its analysis of how local area needs driven by once-through cooling (OTC) retirements affect resource needs for renewables integration by the end of the first quarter of 2012 and recommended that "the CAISO should present the results of its additional OTC and renewable integration studies . . . by no later than March 31, 2012." The settlement recommended that "the Commission should, in collaboration with the CAISO, continue the work undertaken thus far in this proceeding to refine and understand the future need for new renewable integration resources, either as an extension of the current LTPP cycle or as part of the next LTPP," and follow a procedural schedule leading to a "final assessment of need or a decision . . . no later than December 31, 2012."[9]

The PD does not directly address this portion of the settlement. It cautions that "Even if the parties agree on a particular schedule, the Commission, not the parties, controls the Commission's processes."[10] It then proposes to close this proceeding without providing any guidance about how the ambiguity expressed in the settlement about the need for additional resources will be resolved.

The CAISO is already indicating that its studies will show the need for additional resources to maintain the reliability of the grid. By the end of this month, and possibly before the Commission acts on the PD, the CAISO is scheduled to release its study of resources needed for renewables integration and replacement for OTC retirements. The CAISO has already begun a stakeholder process on the need for flexible capacity to meet future system needs. If the

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[9] Settlement, pp. 5-6.
[10] PD, p. 10.

CAISO concludes that additional resources are needed (or that existing resources need to be retained) and the Commission agrees, the Commission will need to act quickly to avoid reliability problems in future years.

The PD should be modified to acknowledge and respond to the procedural recommendations of the settlement. The fact that the Commission controls the scope and schedule of its proceedings is uncontested. However, in approving the settlement, the Commission need not and should not ignore the recommendations incorporated in the settlement.

The settlement urges the Commission to take up the CAISO's conclusions "either as an extension of this LTPP cycle, or as part of the next LTPP cycle." IEP recommends examining the issues of need and contracting practices in a new phase of the existing proceeding (*i.e.,* Track IV) to avoid the delay associated with noticing the order opening a new proceeding, the Commission's vote approving the order, time for responses to the new order, noticing and holding a prehearing conference, and preparing and issuing a scoping ruling and memo.[11] By the time the Commission will be ready to begin actually considering the substance of the CAISO's studies in a new proceeding, it may be too late to authorize the additional resources needed to avoid reliability problems.[12] Ultimately, it will be much faster and more efficient to address these issues in a new, adjunct phase of this proceeding than to commence a new proceeding.

C. Calpine's Proposed Intermediate Term Solicitations and SCE's New Generation Auction Mechanism

Calpine proposed that the utilities should be directed to conduct competitive solicitations for 3- to 5-year power purchase agreements (PPAs) with existing resources that do not have contracts. The PD rejects Calpine's proposal, largely on the questionable grounds that Calpine did not have access to its competitors' confidential commercial information[13] and did not want to make its own confidential commercial information public.[14]

SCE proposed that the Commission should open a proceeding to consider a New Generation Auction Mechanism for new capacity needed to replace retiring OTC units or for

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[11] Public Utilities Code Section 1701.5 requires proceedings to be completed within 18 months but also allows for extensions of this deadline.

[12] In recent years, it can take 7-10 years to plan, develop, and construct a new or repowered generation facility in California, especially near load centers in Southern California, *e.g.,* Walnut Creek Energy Park, El Segundo repowering, Sentinel Energy Project.

[13] PD, p. 13-14.

[14] PD, p. 14.

renewables integration. The PD rejects this proposal because the proposed scope is "too prescriptive."[15]

Until the Commission has received and evaluated the CAISO's assessments of the need for additional resources to replace retiring OTC units and to facilitate the integration of variable renewable resources into the grid, it should not dismiss either Calpine's proposal or the SCE proposal out of hand. If the CAISO determines that resources are needed in the 3-5 year time frame, Calpine's or SCE's proposal could provide a starting point for considering how best to procure the resources required to meet that need.

Instead of dismissing Calpine's and SCE's proposals, the Commission should modify the PD to include a consideration of these and other proposals in a new Track IV phase of the existing proceeding. In that way, the CAISO studies' projections of need and the appropriate vehicles for procuring that need may be considered in an integrated fashion.

D. A Framework for Selecting Resources

If the CAISO identifies an additional need for resources as part of its study of the retirements of OTC units and renewables integration, the Commission will immediately require a framework for selecting the resources to meet that need. Assuming that the Commission continues to follow its "competitive markets first" policy, the testimony IEP presented in response to the Scoping Memo's call for "refinements to bid evaluation in competitive solicitations" identifies some key structural changes that should apply to any solicitation.

In particular, IEP articulated some crucial principles that form a framework for improved bid evaluation and fairer and more competitive solicitations:

- **Define the desired product of service as specifically as possible.** If bidders are left to guess what products the utility is actually seeking, the result will be bids that are not tailored to the specific utility needs, extensive negotiations to attempt to conform the proposed projects to meet the utility's needs, delays in the procurement process, and wasted time for both bidders and bid evaluators.[16]

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[15] PD, p. 26-27.
[16] See IEP's Opening Brief, p. 8.

- **Project viability should play a larger role in bid evaluation.** The rates of project failure demonstrate that viability is not weighted heavily enough in the least cost/best fit analysis.[17]
- **Provide bidders with information on the bid evaluation parameters and process.** When the specific product definition and the relative value of the desired characteristics are made known to bidders in advance, bidders will define and bid the projects that meet the utility's needs, resulting in the best value at the lowest cost to ratepayers.[18]
- **No resources should be arbitrarily excluded from participation in a solicitation.** Any resource (including demand response) that can satisfy the performance, availability, and location requirements of the specified product or service should have a chance to compete in the solicitation, without regard to technology or vintage.[19]

The PD should be modified to state that procurement of additional resources should follow the framework for bid evaluation and resources selection that IEP proposed.

II. TRACK III ISSUES

A. Once-Through Cooling

Although the PD correctly rejects proposals to limit procurement of OTC to one-year contracts, the PD proposes other restrictions on procurement of OTC resources that are unnecessary and will lead to needlessly higher costs for ratepayers. Instead of the PD's complicated restrictions, procurement from OTC units should be guided by a simple principle:

- Consistent with Commission-approved procurement rules and practices, utilities should be able to enter into contracts to procure the output of OTC plants to meet resource or grid reliability needs as long as and to the extent that the plants comply with the policies and rules of the State Water Resources Control Board (SWRCB), the state agency responsible for implementing Section 316(b) of the Federal Clean Water Act, evaluating the effects of OTC on marine life, and setting the restrictions on the operations of OTC plants.

[17] See IEP's Opening Brief, pp. 6-8.
[18] See IEP's Opening Brief, pp. 8-13.
[19] See IEP's Opening Brief, pp. 13-16; D.05-12-022, pp. 22-23.

Instead of following this simple and logical principle, the PD addresses OTC by imposing unnecessary and unreasonably restrictive conditions that will ultimately have the effect of increasing costs to ratepayers.

The PD begins by requiring the utilities to file contracts of less than five years' duration with OTC resources as Tier 3 advice letters. Contracts of less than five years with other generation units that do not rely on OTC are not subject to this filing requirement, and the PD offers no explanation for this discriminatory treatment. This new requirement will delay the approval of contracts with OTC facilities, create uncertainty, and, as a result, increase costs. This new requirement has no justification and should be deleted from the Commission's final decision.

The PD then imposes significant additional requirements, depending on when the contract with an OTC unit terminates.

Contracts with an OTC facility that terminate one year or less before the facility's SWRCB compliance deadline. For these contracts, the PD requires the utility seeking approval of the contract to show that the agreement (1) helps facilitate compliance with the SWRCB's OTC policy and (2) does not prolong OTC operation. The reasons for imposing these requirements and the nature of the utilities' required showing are not clear. Why should the Commission place additional requirements on contracts with facilities that operate in compliance with the SWRCB's regulations? How does a utility demonstrate that a PPA "facilitates compliance" with OTC policies? How should a utility address the inherent conflict between the two required showings: One the one hand, the contract will facilitate compliance by providing revenues to an OTC unit that might allow investment in upgrades that limit or eliminate OTC. On the other hand, since a plant can comply with the OTC policies by retiring, a contract that allows the plant to continue in operation in the years leading up to compliance deadline could be seen as prolonging OTC operation.

Contracts between a utility and an OTC unit that extend beyond the compliance deadline. Here again, the PD imposes additional and unnecessary conditions on the procurement of resources that may be the least-cost/best-fit solution to resource and reliability needs. The first of the PD's conditions is that the utility may purchase power produced by OTC only up to the plant's OTC compliance date. But the SWRCB allows a plant to continue to use OTC resources if impacts on aquatic life are reduced, either through technical solutions or

reduced operation. If the SWRCB allows continued OTC operation, why should the Commission impose more onerous restrictions? Why should the Commission second-guess the agency that has the responsibility to ensure that California meets the federal law's requirements? Why should the Commission substitute its judgment for SWRCB's on matters that are within the SWRCB's jurisdiction and expertise? These sorts of restrictions interfere with the procurement process and result in higher costs to ratepayers and delays in the procurement of needed resources.

The second condition the PD imposes is that the contract protects ratepayers against stranded costs. The payments under most independent energy producer (IPP) contracts follow a pay-for-performance approach. If there are some sort of guaranteed payments associated with a particular contract with an OTC facility, the Commission will review the contract, as it would for a facility that does not use OTC, and only approve the contracts that are reasonable. In short, the PD fails to explain why the risks of stranded costs, if any, are greater for OTC plants than for plants that use other cooling technologies. Furthermore, the PD fails to explain how the utility is to achieve this standard.

The PD's third condition is that the contract protects ratepayers against the risk of future unspecified cost increases resulting from increases in the cost of the generation unit's compliance with the SWRCB's OTC policy. Any attempt to increase the prices specified in the contract would usually be reviewed by the Commission for reasonableness. In this respect, contracts with OTC plants and with plants using other cooling technologies are subject to the same requirements, and it is unclear why the PD thinks additional requirements are needed for OTC plants.

The PD's fourth requirement is that the procurement of the OTC plant is consistent with a need authorization from the LTPP proceeding. Once again, this restriction already applies to the utilities' procurement from both OTC and non-OTC plants, and it is unclear why the PD finds it necessary to reiterate this requirement for OTC procurement.

The PD's final requirement is that the contract with the OTC facility is consistent with other procurement rules. Again, why is it necessary to make this existing, general requirement a specific condition for OTC contracts?

As a practical matter, there is no reason to assume that the Commission will authorize long-term contracts with units that are not in compliance with the SWRCB's

requirements, except possibly in extraordinary circumstances. The Commission should reject the PD's additional conditions and instead defer to the jurisdiction and expertise of the SWRCB on the issue of the continued operation of OTC units. Instead, the Commission should focus on developing a procurement framework that meets the needs of the grid, implements the state's policies at the lowest cost to ratepayers, and removes obstacles to the utilities' procurement of least-cost/best-fit resources. OTC plants that can operate in compliance with the SWRCB's requirements can increase the supply of capacity, energy, and critical reliability services, and they will be selected in competitive solicitations and dispatched when they are the least-cost/best-fit options. The Commission should reject the PD's proposed additional restrictions and clarify that utilities may procure products from OTC plants operating lawfully to the same extent and under the same terms as other generation resources.

B. Fair Comparisons Between Utility-Owned Generation and Power Purchase Agreements with Independent Power Producers

1. The PD's Approach to UOG

Properly concerned about the need to ensure competitive opportunities, the PD bars utility-owned generation (UOG) from competitive solicitations and sets a series of conditions that must be met before the Commission will consider a proposal for a UOG facility. The package of conditions the PD proposes could provide a workable and easily administered approach to the problems that arise when the utility is both the primary buyer and a potential supplier in the same market. The PD's description of this approach, however, requires further elaboration to address several key questions.

First, the PD declares that UOG projects cannot compete in the competitive requests for offer (RFOs) undertaken by the utility. Any proposal that includes explicit paths for utility ownership of the facility should be classified as UOG and barred from competitive RFOs. The PD should be revised to clarify that build-own-transfer or turnkey proposals and proposals to transfer ownership to the utility at the conclusion of the contract term are UOG and are subject to the same limitations as UOG plants initially constructed by the utility.

Second, the PD recognizes that it would be "potentially useful" to have identical levelization periods for UOG and PPAs for evaluation purposes, but it then shies away from making this a requirement. Instead, the PD merely states that "it would be reasonable" for a utility to include equal levelization periods when proposing UOG projects but only requires the

utility to perform this analysis if requested by the assigned Administrative Law Judge (ALJ) or Energy Division staff. Unfortunately, the PD's approach may ultimately have the effect of decreasing the transparency of the evaluation of the UOG proposal. If the utility produces the levelization analysis only in response to requests of the ALJ or Energy Division staff, it becomes easy for the utility to invoke Section 583 and block public access to the analysis. On the other hand, if the levelization analysis is required to be part of the application for approval of the UOG facility, the analysis will be available to the public except to the extent that the utility can demonstrate that the material is market-sensitive or protected by other statutory provisions. The PD should be revised to require identical levelization periods for UOG and PPAs for evaluation purposes.

Third, the PD requires the utility's cost of project and bid development to be included in any comparison with PPAs or other resources. Excluding these costs from the UOG costs would skew the comparison with a PPA. IEP supports the PD in this respect.

Fourth, the PD requires critical cost parameters (including initial capital costs, capital additions, fixed and variable O&M, heat rates) for UOG project to be fixed for the first 10 years. This requirement puts the UOG on the same footing as PPAs, which typically are paid at a fixed rate on a pay-for-performance basis, with no ability to recover increases in the cost elements (unless provided in the PPA). The PD then appears to make an exception to this general rule for the "re-pricing" of a UOG's capital costs, on the ground that generators may ask to re-price their PPAs. But any such "re-pricing" of a PPA occurs before the PPA is approved and becomes effective. Once the PPA takes effect, any alteration of its terms, including the price term, requires an amendment to the PPA and in many cases the Commission's approval. A PPA's effective date is analogous to the date the Commission issues a Certificate of Public Convenience and Necessity (CPCN) or similar approval. If the utility can seek recovery of increased capital costs **after** issuance of the CPCN, this exception immediately undermines the rule that these costs are to be fixed for ten years. The PD should be modified to allow UOG projects to be re-priced only before the issuance of the CPCN.

The PD also notes the differences between the automatic recovery of capital costs once these costs have been rate-based and the lack of assurance of cost recovery in PPAs. The PD then suggests that "utilities may wish to align the capital cost recovery terms of any proposed

UOG projects with those typically applicable to PPAs."[20] But the PD fails to explain why any rational utility observing its fiduciary obligation to its shareholders would voluntarily give up the assured capital cost recovery under cost-of-service regulation for the far riskier cost recovery model of a PPA. No utility will voluntarily give up the opportunity to place a UOG facility's capital costs in rate base. If the Commission thinks that result is desirable, it should be realistic and modify the PD to order the utilities to alter the cost recovery protocols for UOG.

Finally, the PD allows utilities to submit a CPCN application for UOG only after the utility has conducted a solicitation that "failed." This is a worthwhile idea, but it has the obvious problem that the utility controls most of the factors that could lead to a "failed" RFO. For example, the utility sets the requirements for an RFO, and certain provisions, *i.e.,* excessive credit requirements, could easily discourage legitimate bidders. In addition, the PD proposes that the utility will file an advice letter seeking the Commission's confirmation that a solicitation has failed, and the utility can thus make the initial proposal of the criteria for determining whether an RFO has failed. To make this policy more effective, the determination that an RFO has failed should be made more transparent and opened up to public scrutiny. The PD should be revised to require the utility to file an application, rather than an advice letter, seeking the Commission's confirmation that its RFO was a failed RFO. An application allows for far greater public participation than an advice letter, and parties will have a greater opportunity to probe the rationale and supporting facts for the utility's assertion that the RFO failed.

2. IEP's Comparison Methodology Responded to the Commission's Directions and Should Not Be Dismissed without Further Consideration

The Order instituting this proceeding included as an issue to be considered in Track III:

> **Refinements to Bid Evaluation in Competitive Solicitations (particularly with respect to UOG Bids)** – D.07-12-052 identified several concerns related to the process for evaluating UOG bids against Power Purchase Agreements bids. These concerns focus on 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 and IPP bids.[21]

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[20] PD, p. 35.

[21] OIR, p. 16. Also see, Scoping Memo, p. 44 and *Administrative Law Judge's Ruling Revising System Track I Schedule*, p. 4 (March 3, 2011).

The concerns identified in D.07-12-052 stemmed from D.04-12-048, in which utilities were instructed to compare UOG and bids from IPPs. In D.07-12-052, the Commission allowed head-to-head competition between bids for PPAs for IPP projects and bids for turnkey contracts that would result in UOG. However, the Commission stated:

> We have insufficient experience at this time regarding how the different qualitative and quantitative attributes associated with straight Utility build bids and IPP bids that are identified in D.04-12-048 . . . will be reconciled in order to perform meaningful, apples-to-apples comparisons of Utility build and IPP bids, so we retain the prohibition on Utility build bids in competitive RFOs at this time.
>
> *We encourage interested parties to introduce well-developed proposals in the 2008 LTPP proceeding that address the issues raised in D.04-12-048 . . .* [22]

In the 2008 LTPP proceeding, issues related to "meaningful, apples-to-apples comparisons" were deferred to the present proceeding. In this proceeding, IEP—and only IEP—responded to the Commission's direction in D.07-12-052 and the Order and Scoping Memo for this proceeding. IEP presented a detailed proposal on how fair comparisons between UOG and IPP bids could be performed. The PD acknowledges the problems associated with evaluating UOG versus IPP projects, and recognizes that IEP's proposed approach to dealing with this issue has "potential benefits." However, the PD then dismisses IEP's proposal on two grounds. First, the PD characterizes IEP's proposal as a "wholesale revision of the current rules." Apart from the observation that the current rules on comparing UOG and PPAs are in need of wholesale revision, as the Commission acknowledged, IEP's proposed algorithm was in fact derived from existing policies and mechanisms like the Project Viability Calculator used in connection with the assessment of renewable generation proposals. Second, the PD concludes that it is not clear that IEP's proposal is ready for implementation "in its current formulation." However, IEP acknowledged that its proposal required further refinement—in particular, the incorporation of information that was not available to IEP—before it could be implemented. In short, the PD's dismissal of IEP's proposal was not based on substantive grounds.

The PD recognizes that "it is still necessary for the Commission to be able to fairly compare the costs of UOG and PPA projects, even if they are not in a single RFO, as the

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[22] D.07-12-052, p. 207 (emphasis added).

Commission continues to have a duty to assure just and reasonable rates. The Commission needs to know that if there is a choice of generation sources, that it is authorizing the most appropriate one(s)." The PD thus makes the best argument for **not** dismissing IEP's proposal—the Commission needs a comparison methodology that can assure the Commission and the public it serves that the best, least-cost, best-fit resources are being selected, regardless of the identity of the facility's owner or the financial structure supporting the facility, and IEP's proposal is the only option before the Commission in this proceeding. The Commission should not dismiss IEP's proposal. Instead, the Commission should accept the model, making updates and revisions as needed, so that the comparison methodology is available if and when a UOG application comes before the Commission for review.

C. IEP's Motion on Treatment of Existing Contracts Without Means of Recovering GHG Allowance Costs

On September 23, 2011, IEP filed a motion seeking a determination in this proceeding of the treatment of certain contracts that IPPs entered into before the enactment of AB 32. Because AB 32 was not yet law, some of these contracts do not include provisions that allow the generators to recover the costs of greenhouse gas (GHG) emissions allowances required to continuing performing under the contact. On the other hand, the California Air Resources Board (CARB) allocated free allowances to the utilities to compensate for the costs the utilities would incur under the terms of their PPAs with GHG-emitting resources, who could pass on the costs of allowances needed for continued operation to the purchasing utility. The contracts that are the subject of IEP's motion, however, have no ability to recover the costs of the allowances needed to operate. In response to IEP's motion, the PD directs utilities to renegotiate contracts to address the allocation of GHG compliance costs. If amended agreements are not submitted to the Commission for approval within 60 days, the issue will be addressed and resolved in GHG allocation proceeding.

The problem with the PD's response to IEP's motion is that IEP already raised this issue in the GHG allocation proceeding. This issue was referred to the LTPP proceeding in the joint ruling in the GHG allocation proceeding and this proceeding on August 4, 2011. Moreover, CARB has already urged renegotiation of the affected contracts. Despite these efforts, for at least some contracts, this issue remains unresolved.

The PD's referral of this issue back to the GHG allocation proceeding is no solution. The Commission cannot continue to defer of resolution of this issue. The auctions of GHG allowances auctions begin shortly, and parties need to know where they stand. Following up on the PD's primary recommendation, the PD should be revised to state unequivocally that if renegotiation fails to resolve this issue within 60 days, the Commission will act to set aside allowances from the pool of allowances freely allocated to the utilities to compensate them for these costs and will develop a means to transfer the allowances to the affected generators who are unable to operate without such allowances. Alternatively, the PD should be revised to state that the utilities will be required to reserve some of the auction revenues they receive from selling allowances to compensate the affected generators.

III. CONCLUSION

The Independent Energy Producers Association respectfully urges the Commission modify the PD to make the following changes:

- reflect that parties to the Track I settlement agreed only that the modeling results did not demonstrate whether or not there was a need for new capacity during the planning horizon.
- include an examination of the issues of need and contracting practices in a new phase of the existing proceeding.
- include a consideration of Calpine's and SCE's proposals and other proposals in a new phase of the existing proceeding.
- require procurement of additional resources to follow the framework for bid evaluation and resources selection that IEP proposed.
- remove unnecessary restrictions on procurement from OTC units and authorize utilities should to enter into contracts to procure the output of OTC plants to meet resource or grid reliability needs as long as and to the extent that the plants comply with the policies and rules of the State Water Resources Control Board.
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- require identical levelization periods for UOG and PPAs for evaluation purposes.
- allow UOG projects to be re-priced only before the issuance of the CPCN.

- require the utility to file an application, rather than an advice letter, seeking the Commission's confirmation that its RFO was a failed RFO.
- accept IEP's model for making comparisons between UOG and IPP projects and make updates and revisions as needed, so that the comparison methodology is available if and when a UOG application comes before the Commission for review.
- grant IEP's Motion for Expedited Determination of Issue and state unequivocally that if renegotiation fails to resolve this issue within 60 days, the Commission will act to set aside allowances from the pool of allowances freely allocated to the utilities to compensate them for these costs and will develop a means to transfer the allowances to the affected generators who are unable to operate without such allowances. Alternatively, state that the utilities will be required to reserve some of the auction revenues they receive from selling allowances to compensate the affected generators.

With these modifications, IEP urges the Commission to approve the PD.

Respectfully submitted this 12th day of March, 2012 at San Francisco, California.

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