

**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)

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

INDEPENDENT ENERGY PRODUCERS
ASSOCIATION

Steven Kelly, Policy Director
1215 K Street, Suite 900
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
Email: steven@iepa.com

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP

Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers
Association

Dated: March 19, 2012

**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)

**REPLY 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 reply comments on the Proposed Decision (PD) of Administrative Law Judge Peter Allen on Track I and Track III of this long-term procurement plan (LTPP) proceeding.

I. TRACK I ISSUES: KEY RESOURCE NEED ISSUES MUST BE RESOLVED THIS YEAR

IEP and other parties noted that the PD approved the Track I settlement but did not accept the settlement's procedural recommendations.¹ Although IEP did not join in the Track I settlement, it shares the settling parties' recognition of the urgency of addressing the issues related to the need for additional resources (and the need to retain existing resources) early in 2012. The California Independent System Operator (CAISO) noted that the results of its studies of the impacts of once-through cooling (OTC), renewables integration, and local capacity requirements would be available within a month, and that the Commission should plan to issue its decision on those topics by the end of 2012. The more general assessment of the need for system resources can be deferred until 2013.

¹ *E.g.*, Comments of IEP (pp. 3-4), PG&E (pp. 4-5), CLECA (p. 2), CAC (pp. 1-2), GenOn (pp. 5-6), EPUC (pp. 1-2), AES Southland (pp. 10-11), CAISO (pp. 3-6).

Critically, if the examination of the need for additional resources concludes that new generating resources are needed by 2020, the long lead times for planning, contracting, siting, permitting, and constructing a new generation resource compel the Commission to act in 2012 to avoid future potential shortages. Recent experience suggests that even under the best of circumstances, the time for developing a sizable new generation plant can range from five to almost eight years, and even longer for contentious or litigated projects. This lead time means that the process for selecting new resources must begin in 2013—next year—to ensure that the needed resources will begin commercial operations in 2020.

| Range of Duration for Activity (in months) | Range of Cumulative Durations (in months)² | Task or Activity |
|---|--|---|
| 3 | 3 | Pre-RFO Activities by Developers |
| 5-6 | 8-9 | Complete Phase 1 of Interconnection Process |
| 14-20 | 17-23 | Compete in RFO; Negotiate PPA, Obtain Commission approval |
| 10-14 | 17-29 | Pre-Permitting Activities |
| 6 | 17-29 | Complete Phase 2 of Interconnection Process |
| 15-28 | 32-57 | Obtain Permits (including Permit to Construct) |
| 3-9 | 35-66 | Obtain Financing |
| 6-12 | 41-71 | Construct Interconnection and System Upgrades |
| 24-32 | 59-91 | Construct, Test, and Commission Generating Plant |

The time required to obtain a power purchase agreement (PPA) and to get that PPA approved by the Commission is highly variable and unpredictable. Issuing an RFO, submitting and selecting bids, and negotiating a final contract can easily take 10 months or more from the time the utility receives the Commission’s authorization to procure additional resources. The Commission’s approval process can also be time-consuming, sometimes taking 20 months until the approval of the PPA is final and unappealable.

The PD sidesteps the part of the settlement that concerns timing, saying only that “the Commission, not the settling parties, determines the schedule and scope of any subsequent proceeding.” While the draft order instituting the next LTPP proceeding³ appears to include some of these issues within the preliminary scope of the proceeding, it again fails to provide a

² Some activities occur simultaneously. Therefore, sum of each activity’s duration does not necessarily equal the cumulative duration.

³ Available at http://docs.cpuc.ca.gov/PUBLISHED/AGENDA_DECISION/161394.htm.

schedule that reflects the urgency of addressing and resolving certain issues, as described by the CAISO, in 2012. In its comments, IEP recommended keeping these issues in a new Track IV of the existing LTPP proceeding to save time, but the specific proceeding is less important than ensuring that these issues are addressed expeditiously and decided before the end of the year.

The PD should be revised to provide a clear schedule and forum for the Commission to consider the CAISO's studies on OTC, renewables integration, and local capacity requirements and to authorize any needed new generation by the end of 2012.

II. THE UNWARRANTED RESTRICTIONS ON CONTRACTING WITH OTC UNITS SHOULD BE REMOVED

Many parties joined IEP in opposing the unnecessary and ultimately expensive restrictions on the utilities' ability to contract with units that use OTC. The PD seems to assume that the only way for generating units to comply with the OTC requirements of the State Water Resources Control Board (SWRCB) is to retire and cease operations. In fact, the SWRCB allows OTC units to continue to operate as long as they are in compliance with the SWRCB's requirements. As Southern California Edison Company noted, "It is sufficient to preclude IOUs from contracting with OTC facilities not in compliance with SWRCB OTC policy."⁴ The PD should be revised to remove unnecessary restrictions on contracting with OTC resources.

III. UTILITY-OWNED GENERATION v. INDEPENDENT POWER PROJECTS

PG&E rejects the PD's treatment of utility-owned generation (UOG) by noting that the Commission in Decision (D.) 07-12-052 addressed the potential for bias when utility projects compete in Requests of Offers (RFOs) conducted by the same utility. PG&E claims that the "checks and balances" adopted in that decision are sufficient to guard against and competitive favoritism in favor of UOG projects.⁵ PG&E fails to acknowledge, however, that the "checks and balances" of D.07-12-052 were adopted in the absence of an adequate comparison methodology.

What the Commission actually said in D.07-12-052 is very different from PG&E's characterization:

CMA's position that continued reliance on UOG (and ratepayer-backed PPAs) is incompatible with the development of a competitive market model that stimulates private investment is

⁴ SCE's Comments, p. 5.

⁵ PG&E's Comments, p. 12.

consistent with basic economic theory. The Commission is taking measured, cautious steps in the direction of this end-state . . . ⁶

We have insufficient experience at this time regarding how the different qualitative and quantitative attributes associated with straight Utility build bids and IPP [independent power producer] bids . . . 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.⁷

In this proceeding, IEP responded to the Commission's request and submitted testimony that described in detail how to perform an apples-to-apples comparison of UOG and IPP bids. The PD circumvented IEP's proposal, because it was not necessary to address comparison issues if UOG were not allowed to compete in RFOs, as the PD recommended. If the Commission responds to the comments of PG&E and others and allows UOG to compete with IPPs in the utility's RFOs, however, IEP's methodology, as refined by the Commission, will be needed immediately. The Commission should adopt the approach to UOG the PD recommends, but if it is persuaded by PG&E's arguments, it should also adopt IEP's comparison methodology, with revisions and updates as the Commission finds appropriate.

IV. IEP'S MOTION FOR EXPEDITED DETERMINATION

On September 23, 2011, IEP filed a motion in this proceeding seeking a determination of the treatment of the costs of complying with greenhouse gas (GHG) emissions requirements for generators whose existing contracts did not provide a mechanism for the increased cost of operation associated with this compliance. Parties opposing IEP's motion raised two basic arguments. First, they argued that contracts that were executed when AB 32 was being considered, but before it was enacted, should have factored the AB 32 risk into the contract prices. The answer to that argument is simple: until the specific wording of a bill is enacted by both houses of the Legislature and signed by the Governor, IPPs had no solid basis for quantifying and incorporating the future risk into their pricing proposals. If a party is expected to guess about the effects of proposed legislation and to factor in its estimate of the risk of every bill that passes through the Legislature, whether or not it is eventually enacted and

⁶ D.07-12-052, p. 201. (The Word and pdf version of this decision posted on the Commission's website have different pagination. All page references in these comments are to the pdf version.)

⁷ D.07-12-052, p. 207.

signed, then the negotiation of a PPA will become an endless project, with frequent revisions proposed to cover the potential increased cost of hundreds of possible risks that will never materialize.

The other argument is that IEP had not identified any contracts that required its recommended treatment. IEP's ability to identify specific contracts is limited. Antitrust and competitive issues prevent IEP from acquiring specific information about its members' contracts, and the Commission's confidentiality practices limit IEP's and the general public's access to the contracts that come before the Commission for approval. PG&E, which has access to its procurement contracts, stated that its contracts did not fall into the categories that required the treatment IEP sought. However, PG&E's argument was refuted when several companies with contracts that fit into IEP's proposed schedule came forward to support IEP's request. The Commission should adopt the PD's recommendation with the modifications IEP and others proposed to ensure that this issue does not linger unresolved until the eve of the first auction of greenhouse gas allowances in mid-year.

V. CONCLUSION

IEP respectfully urges the Commission to modify the PD as IEP proposed in its comments on the PD and to adopt the PD, as modified.

Respectfully submitted this 19th day of March, 2012 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

By /s/ Brian T. Cragg
Brian T. Cragg