

**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 12-03-014  
(Filed March 22, 2012)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY  
PRODUCERS ASSOCIATION ON WORKSHOP TOPICS**

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The Independent Energy Producers Association (IEP) is concerned and confused about how the comments filed in response to September 14, 2012 ruling of the Administrative Law Judge (ALJ) interact with the record established on similar topics in Track 1 of this Long-Term Procurement Plan (LTPP) proceeding.

In its comments, the Center for Energy Efficiency and Renewable Technologies (CEERT) expressed similar concerns:

According to the September 14 ALJ’s Ruling . . . , comments and reply comments in response to Workshop Topics identified by that ruling “may be used to inform either Track 1 or Track 2 (or both tracks).” If that is the case, to the extent that any issue addressed during the Track 1 evidentiary hearings and resulting briefs overlap with the “Workshop Topics” identified in the September 14 ALJ’s Ruling, CEERT strongly urges the Commission to base its Track 1 decision in the first instance on that Track 1 evidentiary record and legal briefs. This record is not only robust enough to support a reasoned Track 1 decision, but it is also unfair and confusing to permit an after-the-fact, informal workshop and related comments, none of which were subjected to the rigors of the hearing room (i.e., cross-examination and evidentiary rules), to have precedence over or displace that evidentiary record.<sup>1</sup>

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<sup>1</sup> CEERT’s Comments, pp. 1-2 (footnotes omitted, emphasis in original).

IEP attended the September 7 workshop that preceded the September 14 ruling and observed that the workshop was primarily focused on how energy storage could be integrated into the LTPP proceeding. IEP was among the parties who were not served with the September 14 ruling due to computer problems at the Commission. As a result, for nearly a month following the September 7 workshop, IEP was under the impression that any subsequent comments would focus primarily on storage issues. Although on October 4 the ALJ re-served the ruling and extended the time for comments until October 9, by that time IEP had already committed its resources to the evidentiary hearings on Track 1 issues that took place in August and the subsequent briefs. IEP decided not to submit comments on the topics identified in the September 14 ruling, because it believed that the same issues had already been addressed during the evidentiary hearings and briefing in Track 1 of the LTPP and would be decided as part of Track 1, and not part of the energy storage proceeding, R.10-12-007.

IEP is concerned that the overlap between the topics addressed in comments on the September 14 ruling and the subject matter of the Track 1 hearings will leave the Commission with a confused record. Many parties used the comments as an opportunity to reprise their briefs in the LTPP proceeding. IEP has not performed a detailed comparison of parties' LTPP briefs and workshop comments, but it is at least possible that some parties provided new and untested information as part of their comments, thus gaining an unfair advantage over parties whose comments did not go beyond their LTPP showings and creating a difficult and potentially confusing record on which the Commission must base its decision.

The comments on the workshop issues may enhance the record in the storage proceeding and provide useful insights into the procurement process, but their use in the LTPP proceeding is troublesome. As CEERT pointed out, the comments have not been subjected to

cross-examination and are not subject to evidentiary rules designed to weed out untrustworthy information, as the testimony and exhibits in the LTPP proceeding were.

Under these circumstances, IEP joins with CEERT and others to urge the Commission to base its Track 1 decision solely on the evidentiary record developed in the hearings on Track 1 of the LTPP proceeding and associated briefs. In addition, the Commission should clarify exact what use, if any, it intends to make of the comments and reply comments submitted in response to the September 14 ruling, particularly with regard to the decision on Track 1 issues.

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

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