

**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)

**COMMENTS OF THE INDEPENDENT ENERGY  
PRODUCERS ASSOCIATION ON THE PROPOSED  
DECISION ON TRACK 1 ISSUES**

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The Independent Energy Producers Association (IEP) submits the following comments on the Proposed Decision (PD) of Administrative Law Judge David Gamson, issued on December 21, 2012. The PD authorized long-term procurement for local capacity requirements (LCRs) and resolved the issues raised in Track 1 of the Long-Term Procurement Plan (LTPP) proceeding. IEP's comments on the PD are presented in two sections. First, IEP provides a general and supportive overview in response to the PD and offers suggestions on how to improve the clarity of the presentation. Second, IEP comments on specific aspects of the PD.

**I. GENERAL OVERVIEW**

On the whole, the PD does a good job of balancing the need to ensure overall grid reliability and the need to respond to stakeholder's special interests related to preferred resources and similar topics. Ensuring that the lights stay on is paramount, and the PD takes steps to secure the availability of a sufficient amount of viable, committed resources to meet forecasted need. The PD's balancing approach recognizes that if uncommitted and certain preferred resources are not able to deliver the needed products between now and the next LTPP proceeding

planning cycle, the Commission has an opportunity to meet unfilled need with resources with a proven track record of being available to serve grid needs. IEP and others have urged the Commission not to postpone procurement decisions on the assumption that uncommitted resources will emerge in a timely and cost-effective manner, and IEP continues to have a concern about relying on uncommitted resources that may not begin contributing to meet resource needs when expected. With the next LTPP proceeding scheduled for 2014-2015, the PD effectively delays the procurement of any resources needed to backfill for uncommitted resources that fail to materialize until 2016 or later. Postponing this procurement is risky. If the Request for Offers (RFO) the PD directs Southern California Edison Company (SCE) to conduct in 2013 fails to result in cost-effective options in the amounts the PD reserves for preferred resources and storage (*i.e.*, 450 MW and 50 MW, respectively), risks to overall grid reliability will increase exponentially.

To help mitigate the risk to reliability if uncommitted resources fail to materialize as the PD assumes and recognizing that new or repowered thermal generation requires several years to become operational, IEP recommends that the Commission should authorize in this decision SCE to procure additional resources in 2014. In this decision the Commission should provide SCE the discretion to conduct an additional RFO immediately in 2014 to procure additional resources totaling the need identified in the Environmentally Constrained scenario (1,870 – 2,884 MW) used in the studies performed by the California Independent System Operator (CAISO). For example, if the 2013 RFO results in the procurement of 1,000 MW of conventional resources and 0 MW of preferred resources and storage, SCE should be granted the discretion to procure in 2014 up to an additional 1,884 MW (depending on the effectiveness of the sites) to help maintain overall grid reliability.

The PD presents a thorough assessment of the need for new resources. However, the PD would benefit from additional clarity about the exact procurement authority it provides to SCE. Because the PD authorizes SCE to procure a range of resources (“no less than” and “up to” specified amounts), the exact scope of the PD’s authorization for each specific technology or group of technologies is difficult to discern. IEP recommends inserting a table into the PD describing exactly what is being authorized. As IEP interprets the PD, the following amounts are authorized for the Los Angeles (LA) Basin local reliability area:

***LA BASIN LCR Procurement Authorization***

	<b>Conventional Natural Gas</b>	<b>Preferred Resources (DG, EE, DR, as well as Storage):</b>	<b>Storage Resources:</b>	<b>TOTAL:</b>
<b>Minimum Amount:</b>	1,000 MW		50 MW	1,050 MW
<b>Additional “up to” Amount ( i.e., Maximum):</b>	0-200 MW	0-450 MW		0-450 MW
<b>Total Authorization:</b>	<b>1,000-1,200 MW</b>	<b>0-450 MW</b>	<b>50 MW</b>	<b>1,050-1,500 MW</b>
<i>AUTHORIZATION For Forecasted Distributed Generation</i>		<i>1,519 MW</i>		

**II. COMMENTS ON SPECIFIC ISSUES**

**A. Compliance with State Regulations**

The PD properly determines that procurement planning should assume that units using once-through-cooling (OTC) will comply with regulations established by the State Water

Resources Control Board. The PD states, “there is at this time insufficient evidence that any change to the OTC deadlines . . . will occur. If any extensions to the OTC closure deadlines do occur, this can be taken into account in future procurement proceedings or in review of a procurement application by SCE.”<sup>1</sup> To the extent that additional information becomes available that affects the status of the OTC units, that information can be taken into account in future procurement decisions. Assuming that OTC units will not comply with state regulations would be imprudent from a planning perspective.

**B. Eligibility to Bid Should Not Be Limited by Technology**

The PD directs SCE to include “[n]o provisions specifically or implicitly excluding any resource from the bidding process due to resource type” in the RFO authorized by the PD.<sup>2</sup> IEP agrees. Although the Legislature may establish procurement requirements for certain types of resources (such as the Renewables Portfolio Standard (RPS)) that the Commission must honor, California energy markets are increasingly oriented to “products” or functions that can be supplied by a variety of resource technologies. Once the need for a product is identified, procurement practices should be designed to encourage all resources capable of supplying the product to bid to provide that product. This approach ensures that ratepayers will obtain the products and services they need at the least cost. Further, this approach enables the Commission to ascertain clearly which resources are most suited to meet California’s needs and which technologies truly face barriers to entry due to externalities or other reasons.

**C. Requirement for Single Application**

The PD states, “All contracts stemming from the LCR procurement authorization . . . shall be brought to the Commission for approval in a single application for the

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<sup>1</sup> PD, p. 42.

<sup>2</sup> PD, p. 87.

LA basin local area and a single application for the Big Creek/Ventura local area. . . .”<sup>3</sup> IEP has concerns about this requirement. Presumably, this requirement grew out of the experience of Pacific Gas and Electric Company after the 2006 LTPP decision, D.07-12-052, when selected resources were brought forward for the Commission’s approval over several years. IEP can understand the PD’s desire to concentrate the approval process, but the PD’s requirement would have a harmful effect on developers if approval of their contracts is delayed due while other contracts are negotiated and executed. Different projects present different degrees of complication, and delaying approval of contracts that are ready for approval will increase costs and threaten achievement of the commercial operation date, which in turn could jeopardize reliability. The costs that underlie a project’s bid (and the price agreed to in the resulting contract) will continue to change, and unnecessary delays in approving contracts could jeopardize the economic viability of the project if the underlying costs increase during the period of delay.

The PD should be modified to remove this requirement. SCE should have the discretion to bring contracts to the Commission for approval as soon as they are ready, to avoid unnecessary delays and cost increases. If the Commission is concerned about the progress of procurement authorized in the Track 1 decision, it may require SCE to report periodically on its progress toward the procurement goals established in the PD.

**D. The Storage Set-aside**

The PD authorizes SCE to procure between 1,050 and 1,500 MW of capacity in the West Los Angeles sub-area of the LA Basin local reliability area. The PD requires at least 50 MW of that total to be reserved for energy storage resources.<sup>4</sup> The reservation of 50 MW for

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<sup>3</sup> PD, p. 88.

<sup>4</sup> PD, pp. 60, 80.

storage technologies raises several issues. Energy storage is expected to deliver a host of benefits to California ratepayers. Generally, these benefits can and should be identified in the context of products needed to serve California ratepayers. For example, delivering power during peak periods should be valued through proper establishing of time-of-use rates for energy deliveries; quick start and quick ramping capabilities should be properly valued in the product definition of the Flexible Capacity Product currently under consideration by the Commission and the CAISO. If storage provides benefits by moving off-peak power from renewables for delivery during on-peak periods, this attribute should be properly valued in the RPS procurement process. If storage is not connected to renewable generation, then storage is essentially shifting delivery of system power (which may be produced by natural gas, coal, nuclear or large hydro facilities) from one period to another.

Whether or not storage can shift delivery period economically relative to other technologies should be determined in the competitive marketplace. As noted above, all technologies that can provide the products or services sought should be allowed to bid. The PD embraces this principle,<sup>5</sup> and it is unclear why the PD sets aside 50 MW for storage at a time when the on-going storage proceeding (R.10-12-007) is assessing the benefits and costs of various storage applications.

**1. The PD Conflicts with Procurement Based on Least-Cost/Best-Fit**

The Commission has for some time embraced the policy that procurement should be based on least-cost/best-fit (LCBF) principles. By arbitrarily creating a special status for storage, the PD ignores this principle and directs SCE to procure at least 50 MW of storage, even

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<sup>5</sup> PD, pp. 77, 87.

if it is more costly to ratepayers than other resources that offer an equally good or better fit at a lower cost.<sup>6</sup>

Moreover, the set-aside for storage contradicts the PD's requirement that "[i]n addition to meeting reliability criteria and consistency with the Loading Order, LCR procurement by SCE must be at least cost to ratepayers."<sup>7</sup>

Storage can be a valuable addition to the resource base, but it should not be elevated to a position above all other technologies. The PD should be modified to adhere to LCBF principles, to reject an arbitrary set-aside for energy storage, and to allow cost-effective energy storage to compete on a fair and equivalent basis with other resources.

## **2. Not All Forms of Storage Address Local Reliability Needs**

The emergence of innovative storage technologies is one of the most exciting trends in the electric industry over the last few years. Storage technologies can provide a variety of improvements to the electric generation sector, but not all of the storage technologies are able or designed to address local reliability needs, which is the purpose of the LA Basin procurement the PD recommends.

For example, some storage technologies may be used to stabilize the production of wind generation resources, to avoid potential imbalance penalties. Other technologies may be intended to reduce voltage fluctuations to protect sensitive equipment. Molten salt technologies can be used to extend the time when concentrating solar technologies are capable of delivering energy into the evening hours. These technologies offer valuable enhancements to the associated

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<sup>6</sup> The requirements for RFOs include a similar provision disregarding LCBF principles. On p. 87, the PD requires RFOs to include provisions designed "to pursue *all* cost-effective preferred resources in meeting local capacity needs" (emphasis added). Of course, some resources are more cost-effective than others, and the PD seems to require that cost-effective preferred resources should be selected over more cost-effective conventional resources.

<sup>7</sup> PD, p. 78. The PD correctly recognizes that energy storage has not yet been assigned a position in the Loading Order of the Energy Action Plan (PD, pp. 112-113).



generation, but none would necessarily increase the local capacity needed to meet local reliability needs.

Thus, the PD's blanket mandate to SCE to procure 50 MW of storage, without further definition of which types of storage technologies can be used to provide local capacity, could result in the procurement, at a premium price, of resources that have no effect on local reliability needs.

### **3. Long-Term Procurement Should Remain Separate from Research, Development and Demonstration Projects**

The PD's discussion of storage makes it clear that the intent of the 50 MW set-aside is to encourage a promising technology. Thus, the PD orders SCE to reserve at least 50 MW of its procurement authority for storage, even though "[a]t this time we do not have sufficient information to determine how many viable energy storage facilities will emerge between now and 2021 that can be used for local reliability purposes in the LA basin local area (or elsewhere)."<sup>8</sup> Despite not knowing whether the appropriate storage resources will exist, the PD mandates the set-aside because storage is an "emerging resource" and because the required procurement of 50 MW of storage will provide "an opportunity to assess the cost and performance of energy storage resources."<sup>9</sup> These are appropriate goals and functions of Research, Development and Demonstration programs, but they are not appropriate components of a long-term procurement process that is supposed to be guided by competition and "technological neutrality."<sup>10</sup>

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<sup>8</sup> PD, p. 60.

<sup>9</sup> PD, p. 60.

<sup>10</sup> PD, p. 77.

#### **4. Conclusion on the Storage Set-Aside**

Energy storage is an exciting development that offers multiple ways to improve the efficiency and reliability of electric generation. But not all storage applications provide or increase local capacity, and it is not clear that energy storage can compete economically with more conventional resources at this time. In its eagerness to encourage the development of storage technologies, the PD errs by creating a set-aside for storage, rather than focusing on removing any barriers that prevent storage technologies from competing on a fair basis with other resource technologies.

### **III. THE ROLE OF BILATERAL CONTRACTS**

The PD's discussion of bilateral contracts is confusing at times. Part of the confusion arises from the use of the term "bilateral contracts." Strictly speaking, bilateral contracts are contracts involving two parties, and most contracts that result from RFOs involve two parties, the utility/buyer and the generator/seller. The common practice at the Commission, however, has been to use the term "bilateral contracts" to refer to agreements that are not the result of an RFO but instead are the result of negotiations initiated by one of the parties.

The PD discusses a particular type of bilateral contract, the agreements authorized by Public Utilities Code section 454.6. Section 454.6 provides that projects that repower or replace existing thermal power plants and that are needed for local area reliability may qualify for "cost-plus" contracts, *i.e.*, the electricity is priced at the cost of generation plus a reasonable return on investment.

The PD's apparent intent is to authorize procurement through either competitive RFOs or the cost-plus contracts authorized in section 454.6,<sup>11</sup> but that intent is not always made

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<sup>11</sup> See PD, p. 126 (Ordering Paragraph No. 8).

clear. The PD at times equates the section 454.6 cost-plus contracts with bilateral contracts,<sup>12</sup> although most bilateral contracts are based on negotiated prices, not on the cost-plus approach prescribed in section 454.6.

When the PD authorizes SCE to procure resources either through an RFO or through “bilateral contract negotiation,”<sup>13</sup> it is unclear whether the PD’s reference to bilateral contracts is limited to the section 454.6 agreements (consistent with the statement on p. 84) or includes other types of negotiated agreements.

The PD’s discussion of bilateral contracts should be modified to make clear the PD’s apparent intent to authorize procurement only through competitive RFOs or through bilateral contracts that meet the requirements of section 454.6.

#### **IV. CONCLUSION**

IEP respectfully urges the Commission to modify the PD as recommended in these comments and to approve the PD as modified.

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<sup>12</sup> PD, pp. 84, 122 (Conclusion of Law No. 14).

<sup>13</sup> *E.g.*, PD, pp. 86, 88, 93, 119 (Finding of Fact No. 45).

Respectfully submitted this 14th day of January, 2013 at San Francisco, California.

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