

**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 FLEXIBLE CAPACITY WORKSHOPS AND
PROPOSALS**

**INDEPENDENT ENERGY PRODUCERS
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The Independent Energy Producers Association (IEP) submits the following comments on the Administrative Law Judge's Ruling Seeking Comment on Track III Rules Issues (issued March 21, 2013). The Ruling requests comment on specific issues for consideration in Track III related to developing bundled procurement rules for jurisdictional investor-owned utilities (IOUs) subject to the Rulemaking. In the following sections, IEP's comments are provided after each question posed in the Ruling.

1. Maximum and minimum limits on IOU forward purchasing of energy, capacity, fuel, and hedges

a. Should the Commission modify the Assembly Bill (AB) 57 bundled procurement guidelines to indicate minimum and maximum limits for which the three IOUs must procure for future years? If so, should these minimum and maximum limits address energy, system resource adequacy (RA), local RA, and/or flexibility?

***IEP's Response:** Commission-adopted guidelines should provide the IOUs with the authority and flexibility to procure resources needed to meet procurement targets and ensure grid reliability. The guidelines should result in an LTPP decision that authorizes a range of*

procurement, in as clear and transparent manner as possible. If the quantity of the resources competitively selected by the IOUs fall within the procurement range established by the guidelines and the LTPP authorization, then the need for such resources will not be subject to further assessment and re-evaluation when the IOU seeks the Commission's approval of its procurement of the resource.

b. How may the Commission best balance issues regarding departing load in any future requirements for procurement?

IEP's Response: *To the extent that the IOUs have acquired resources on a long-term basis for load that eventually departs, the IOUs should have a reasonable expectation of recovery of these costs from the departing load, properly defined. Ultimately, the cost responsibility for procurement should follow the load that is served by the resource. The Commission should establish clear and stable rules and procedures explaining how costs associated with IOU procurement follows departing load.*

2. Impacts of transparency on forward procurement

a. Should the Commission require the three major electric IOUs to provide more public transparency into the levels of future procurement for which each has entered into a contract? What confidentiality rules could be changed or removed? In particular how can IOUs provide visibility to the California Independent System Operator (CAISO) regarding their midterm procurement contracts?

IEP's Response: *To improve the efficiency of procurement, the IOUs should clearly define the product they are seeking and should provide information about how certain characteristics of the product (or the developer, for some bid elements like viability or security) will be weighed in the evaluation process. In other words, the IOUs should inform the market of what they want and what characteristics of the product are most important to the IOU. In that way, potential*

bidders can design their projects to most closely meet the actual needs of the IOU. In recent solicitations, the IOUs have been more forthcoming about the specific products and attributes they are seeking, but greater transparency about the desired products and attributes is possible and will lead to more efficient procurement, to the benefit of ratepayers.

Greater transparency about the prices of completed procurement will also provide the market with the information it needs to respond to surplus (reflected in low prices) or scarcity (reflected in high prices). The current practice of keeping prices confidential for several years after the contract is approved by the Commission eliminates this market signal and leads to inefficient procurement.

b. How can bids and offers into request for offers (RFOs) be released publically? What other information could be released?

IEP's Response: *The Commission's goal ought to be to promote the highest level of competition for the needed products and to stimulate the greatest amount of innovation among as many bidders as possible. When load-serving entities conduct overlapping RFOs, RFO bidding rules should not create disincentives for bidders to submit bids in as many RFOs as practical. For that reason, bids and offers submitted in IOU RFOs should be treated as confidential data to increase the level of competition and to promote innovation.*

3. Long-term contract solicitation rules

a. Should the Commission adopt a rule that explicitly indicates that existing power plants may bid upgrades or repowers into new-generation RFOs?

IEP's Response: *The RFOs should be designed to acquire energy or capacity products and services. Any generator able to provide the defined product definition or service specification should be eligible to compete to provide that produce or service. Distinctions among generating units based on age or vintage, or new vs. repower, are unnecessary in a product-oriented energy*

market. As a practical matter, if existing generators and repowers are excluded from bidding in long-term procurement solicitations, then a reasonable short- or medium-term capacity market (e.g., 3-5 years) should be made available to these projects. In the absence of a functioning short- or medium-term capacity market, existing units have no reasonable means to recover the cost of repowers or expansions that may provide significant public value (e.g., environmental benefits, enhanced reliability) at substantial ratepayer savings.

i. How should the existing and upgraded components of the repowers be valued differently in an RFO? How can additions such as energy storage be added to existing facilities and be valued against other types of offers?

IEP's Response: *If the Commission continues its development of a product-oriented procurement model, then the key issue is whether the resource can provide the products or services requested. Competition among those that can provide those products or services will reveal the value. On the other hand, if the proposal is to disaggregate the cost basis of unit bids (e.g., incremental costs associated with expansions versus the cost of the generating facility as an entire unit), that approach is wholly inappropriate in a competitive, market-based system and would signal a significant change in Commission procurement rules, practices, and outcomes. This proposal would require a much broader discussion than is afforded here.*

The simplest and most useful tool for determining the added value associated with energy storage is to have transparent, time-of-delivery factors applied in bid evaluation so that bids are valued based on their ability to deliver energy or capacity when needed. At its essence, storage is simply the capability of changing the delivery of energy from one time period to another. The benefit of moving power from one time period to another can easily be calculated based on market demand or market-clearing prices. The cost of moving power from one time period to

another can be determined to be least-cost if competitive procurements provide the proper market signals to bidders to deliver power during high-demand or other critical periods.

ii. Should contracts for repowering or upgrading of facilities be restricted to the same length of contracts as new facilities? If not, please explain why there would be different contract lengths or different terms, and how these differences would be reflected in the valuation of the bids.

IEP's Response: *The length of the contract should be determined more by the identified needs of the IOU than by the nature of the offered resources. Bidders of all types, including repowered or upgraded facilities, should have an equal opportunity to bid varying terms of service in response to the IOU's defined needs. IOUs should apply Net Present Value principles and other valuation methodologies to fairly compare bids that differ in price and duration.*

iii. Is there any information (additional or subtracted) from the RFO or application templates that would need to be changed? Would Energy Division review the RFO differently?

IEP's Response: *To the extent that a minimum or maximum term of service is desired, the minimum/maximum must be prescribed in the RFO. Additionally, the eligibility requirements for bidders must be clear. However, as noted above, the age or vintage of a unit, or whether a unit is a repower or upgrade, should not disqualify a resource that can provide the defined produce or service from bidding. The key is defining the product and the terms of service clearly.*

iv. How should cost allocation issues be addressed?

IEP has no response to this question.

v. How would bilateral negotiations for upgraded or repowered facilities be reviewed?

IEP's Response: IEP supports the "competitive market first" policy adopted in D.07-12-052. IOUs should plan for and conduct competitive RFOs sufficiently far in advance that new or repowered generators can be in operation in time to meet a forecasted need. The cost-effectiveness of bilateral contracting should be informed by the results of competitive solicitations to the extent feasible.

4. Specification of the rules that, if followed, would allow the IOUs to execute bundled procurement contracts without additional review by the Commission

a. Please comment on the following potential new or modified rules to ensure competitive bundled procurement transactions:

i. The IOUs must submit an advice letter or application if they follow their established AB 57 bundled procurement plan authorization, and

1. The contract unit price is a higher than a particular percentage (such as 80%) of the CAISO Capacity Procurement Mechanism or other administratively or market established price.

IEP's Response: IEP disagrees with this potential new rule because it could in effect operate as a price cap on competitively procured products. The Capacity Procurement Mechanism (CPM) administratively sets a value for a specific product—backstop capacity—a value that was negotiated as part of a larger settlement. For example, while parties settled on a CPM price, settling parties understood that the CPM price did not reflect the cost for new capacity to enter the California market. Unless the IOUs decide to procure backstop capacity, the CPM price has little relationship to any product that the IOUs may be procuring in the future.

On a more practical level, creating an implicit contract unit price cap at any level, including at a level set by an administratively determined price, will invite unintended consequences as the market adjusts to the perceived price constraints. In particular, a price cap can mask the market

signals of impending scarcity, setting the stage for potential future stresses on the reliability of the system. A perceived price cap could also have the effect of discouraging some project developers, particularly for projects using innovative technologies, from pursuing new projects or participating in California solicitations. The Commission's procurement goals are better served when more, not fewer, potential sellers participate in competitive solicitations, maximizing the supply options available to the buyer-IOUs.

The idea that contracts at prices higher than a designated standard (e.g., 80% of CPM) will trigger a greater level of scrutiny seems to suggest a concern that prices resulting from competitive solicitations are deemed "too high" by some measure. If the concern is that the procurement process is flawed, the Commission should concentrate on eliminating those flaws and improving the efficiency and competitiveness of the solicitations. If the concern is that market power is being exercised to increase prices beyond competitive levels, the CAISO has a number of tools available to identify and mitigate any attempt to exercise market power, and it's not clear that another, unfocused tool is needed. The Commission's best tool for preventing the potential exercise of market power is to authorize the IOUs to conduct procurement early enough so that the needed generation becomes operational before the need becomes acute.

2. The RFO did not attract sufficient participants.

IEP's Response: *In an environment in which eligibility to bid is not artificially constrained, potential bidders will bid based on the assumption of competition, and the response to the RFO should be robust. To the extent that an RFO did not attract sufficient participants, that is an indication of a flawed RFO protocol or procurement mechanism that needs fixing as rapidly as possible so that the IOU can re-issue an RFO in a timely manner. To date, however, the IOUs' RFOs, including renewable RFOs, CHP RFOs, and all-source solicitations, have attracted*

numerous participants and (from what IEP understands) highly competitive bidding. By conducting RFOs sufficiently forward in time, e.g., in time to conduct a second RFO if insufficient bidders were to emerge in the initial RFO, the Commission can mitigate the risk that an RFO did not attract sufficient participants.

To the extent the lack of bidders is suspected to be an exercise of market power, tools to mitigate potential market power already exist, as discussed above.

3. The total megawatts (MW) procurement is over a specified level of MW.

IEP's Response: *If the IOUs are authorized in their approved AB 57 plans to procure within a minimum/maximum range, then to the extent that the IOUs procure amounts outside the prescribed range, the IOUs should be held to a higher standard and should be required to demonstrate the specific reasons they procured more or less than the Commission authorized.*

ii. Any bilateral contract for a facility that did not make the shortlist of an RFO or an offer that has subsequently been negotiating with the utility for longer than six months since making the shortlist of an RFO must seek Commission approval through a tier III advice letter or application.

IEP's Response: *As noted above, IEP supports the Commission's "competitive market first" policy. Bilateral contracts for a facility that did not make the shortlist of an RFO, as well as bilaterals selected outside of competitive processes, should be subject to the greater scrutiny of a Tier III advice letter or application.*

b. What rules are needed to determine whether an IOU transaction is reasonable and therefore does not require additional review and Commission action?

IEP's Response: *The focus of any proposed rules should be (1) is the transaction consistent with the IOU's approved AB 57 procurement plan, i.e., is the product, amount, and timing within*

the range of the Commission's up-front approval? and (2) was the product selected through a fair and competitive process? If the selection process is truly competitive, the resulting price of the winning offer should be deemed reasonable. As discussed above, contracts that are not the result of a competitive procurement process should be subject to greater scrutiny.

4. Changes to the Commission's adopted Cost Allocation Mechanism (CAM) per Senate Bill (SB) 695, SB 790, Decision 11-05-005 and relevant previous decisions

IEP has no comments on this section at this time.

6. Energy Resource Recovery Account compliance filing requirements

IEP has no comments on this section at this time.

7. Refinements to the Independent Evaluator (IE) program

a. Please comment on the following proposal:

- i. The rules for whom or which entity may qualify to be in the IE pool remain the same.

IEP's Response: *IEP has no comment on this proposal at this time.*

- ii. The IOUs may not limit the IE's interactions with the Commission, specifically in terms of nondisclosure agreements that restriction information sharing.

IEP's Response: *IEP supports this proposal.*

- iii. IEs are positioned on particular assignments through a random selection process, removing IOU influence over which IE may be assigned.

IEP's Response: *IEP supports this proposal.*

- iv. IEs may remain in the selection pool for 10 years (rather than up to 6 years), subject to evaluation every 3 years (maintain current requirement for reassessment).

IEP's Response: IEP supports this proposal.

CONCLUSION

IEP appreciates the opportunity to comment on Track III Rules Issues and respectfully urges the Commission to consider IEP's comments as it evaluates the issues of Track III.

Respectfully submitted this 26th day of April, 2013 at San Francisco, California

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