

**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 3
ISSUES**

**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

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Administrative Law Judge David Gamson’s Proposed Decision Modifying Long-Term Procurement Planning Rules (PD), issued on January 28, 2014, is a fair and comprehensive resolution of the issues addressed in Track 3 of this Long-Term Procurement Plan proceeding. The Independent Energy Producers Association (IEP) has only two comments on the PD.

I. UPGRADES AND REPOWERS IN NEW GENERATION RFOS

In the section on long-term contract solicitation rules, the PD clarifies that upgrades or repowers of existing power plants should be eligible to bid their “incremental capacity” (defined as “capacity incremental to what was assumed in the underlying needs assessment”¹) into new generation Requests for Offers (RFOs). The PD offers concise definitions of “upgraded plants” and “repowered plants.”²

¹ PD, p. 28.

² PD, p. 29.

IEP supports the PD's approach to upgrades and repowers.³ However, at the end of this section, the PD notes that the definition of the desired capacity needs sought by an RFO is sometimes ambiguous, so that a fair evaluation of competing proposals may not be possible. In response, the PD states, "We urge the utilities to remove whatever ambiguity or lack of clarity there is in RFO documents, so as to ensure that bidders know which services, quantities, or locations are the target of the RFO."⁴

A clear and unambiguous definition of the product sought in an RFO is essential to the goal of allowing different types of resources and technologies to compete fairly. The PD should be revised to state the needed correction more strongly, *i.e.*, "We ~~urge~~ order the utilities to remove whatever ambiguity or lack of clarity there is in RFO documents, so as to ensure that bidders know which services, quantities, or locations are the target of the RFO."

II. REVIEW OF MEDIUM-TERM CONTRACTS

The PD proposes to require a Tier 2 advice letter filing and corresponding review of negotiated bilateral power purchase agreements of 50 MW or more with durations of between three months and five years.⁵

IEP does not see any need for additional review of medium-term contracts, but if the Commission is inclined to adopt the PD's approach, IEP has two reactions to this proposal. First, increased scrutiny of contracts that were not previously subject to a pre-approval requirement will place a greater burden on the Energy Division and its staff. The Commission should recognize the burden associated with this new requirement and allocate staff in a way that

³ IEP notes that the PD does not address the treatment of upgrades that improve the flexible operation of existing power plants but do not increase the capacity (MW) of the plant. The California Independent System Operator has indicated that increasing amounts of flexible capacity will be needed to integrate increasing levels of variable renewable resources into the grid, and the Commission should consider the development of incentives for investments in upgrades to existing units that add new flexible capacity (and capacity with other needed operational attributes), even if the upgrades do not result in additional MW.

⁴ PD, p. 29.

⁵ PD, pp. 39-41.

avoids additional delays due to the closer review of these contracts. Before approving the new review requirement, the Commission should ensure that the increased review does not result in significant delays in the approval of these medium-term agreements.

Second, under the rules governing the Tier 2 review process, Energy Division can suspend the effective date of an advice letter for up to 300 days.⁶ Under the PD's approach, the Tier 2 review of a contract with a 4-month term could last longer than the contract itself. To avoid this incongruous result, medium-term contracts of less than six months' duration should be exempted from the Tier 2 review process.

III. CONCLUSION

IEP respectfully recommends that the PD should be modified to strengthen the instruction to the utilities to define the products they seek in their RFOs clearly and unambiguously. If the Commission is inclined to adopt the PD's recommendation for greater review of medium-term contracts, IEP also urges the Commission to consider the resource and staffing demands associated with increased review of medium-term contracts before it approves the PD's recommendation. The PD should also be modified to exempt medium-term contracts of less than six months' duration from the Tier 2 review process. If these recommended modifications and recommendations are taken into account, IEP respectfully urges the Commission to adopt the PD as modified.

⁶ General Order 96-B, § 7.5.2.

Respectfully submitted this 18th day of February, 2014 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

Attorneys for the Independent Energy
Producers Association

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