BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning	R.04-04-003 (Filed April 1, 2004)

REPLY COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION (IEP) TO POST-WORKSHOP COMMENTS REGARDING NEXT STEPS IN PROCUREMENT PROCEEDING

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Pursuant to the Assigned Commissioner's Ruling Regarding Next Steps in Procurement Proceeding, issued on December 2, 2005, the Independent Energy Producers Association ("IEP") submits these Reply Comments to the Post-Workshop Comments submitted on January 5, 2006. In particular, IEP responds to the suggestion that evaluation of the performance of the hybrid market structure is not an issue that should be addressed in this proceeding, because the hybrid market structure is working well. In IEP's view, the hybrid market structure is not working as intended, and it makes no sense to proceed to develop long-term procurement plans that are based on a flawed and ineffective market structure. Thus, IEP urges the Commission to review and analyze the performance of the hybrid market structure to date as part of this proceeding.

I. ASSESSING THE PERFORMANCE OF THE HYBRID MARKET STRUCTURE IS FUNDAMENTAL TO EVALUATING THE EFFECTIVENESS OF THE COMMISSION'S PROCUREMENT MODEL

In their initial comments, some parties have made the assertion that the hybrid market in general and some of its key elements (*e.g.,* the Procurement Review Groups ("PRGs")) are "working properly."[1] For example, Southern California Edison Company ("SCE") states in its initial comments, "SCE questions the relative value of reexamining a wholesale market that has produced thousands of megawatts of newly contracted generation, when the state is faced with the looming uncertainty of the retail market."[2]

While IEP does not disagree that issues related to retail markets are important, this matter should not and need not impede resolution of fundamental unresolved issues surrounding the wholesale market structure in California, including the critical policies that govern utility procurement. Indeed, designing and implementing an efficient wholesale procurement model is a prerequisite for resolving any remaining uncertainties of the retail market.[3]

The procurement model adopted by the Commission in Decision ("D.") 04-12-048 contained many important principles, including (a) the need for a competitive, level playing field -- hence the use of the Independent Evaluator when utility or utility-affiliate projects were involved, (b) the need to foster competition between utility- or affiliate-sponsored projects (including turnkey projects) and independent power projects -- hence, the hybrid market structure concept, and (c) the need for openness and transparency in procurement. As discussed

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[1] Southern California Edison Company's Post-Workshop Comments, p. 11. See Post-Workshop Comments of San Diego Gas & Electric Company, p. 18.

[2] SCE's Comments, p. 11.

[3] It is worth noting that the issues of retail certainty, cost recovery, and retail stranded costs never seem to impede utility investments in generation assets (*e.g.,* Mountainview, SONGS Repower, Contra Costa 8, etc.). Typically, this issue is raised by utilities only in the context of non-utility investment.

below, merely articulating these principles has not achieved the goals of the procurement effort or produced the results that the Commission expected. IEP continues to believe that the incentives inherent in the Commission's hybrid market structure impede progress toward the timely and cost-effective construction of generation infrastructure. Accordingly, as part of 2006 phase of the procurement proceeding, IEP asks the Commission to consider the following:

(a) What were the Commission's original goals and objectives when it implemented a hybrid market structure?

(b) How does the performance of the hybrid market structure compare against these goals and objective?

If the comparison shows that the performance of the hybrid market does not measure up to the original goals and objectives (and IEP believes it does not), then the Commission must address the question of whether or not the hybrid market structure is undermining its procurement goals and objectives as articulated in D.04-12-048.

A. What were the original goals and objectives of the hybrid market structure?

As noted above, D.04-12-048 represents the last major decision on procurement matters adopted by the Commission. That Decision went into considerable detail about how future utility procurements of generating resources were to be conducted. In particular, the Commission determined that utilities were to undertake procurement primarily or exclusively through competitive all-source solicitations open to all resources, including conventional generation, renewable generation, turnkey proposals, buyouts of existing plants, and power purchase agreements ("PPAs").[4] The Commission also stated that "PPAs and utility-owned

[4] D.04-12-048, pp. 115, 128, 215 (Ordering Paragraph 3). (Page references correspond to the page numbers of the version of the decision mailed to the parties on December 20, 2004.)

resources need to participate in the same all-source open solicitations . . . ."[5] The idea that all-source solicitations were to be the primary vehicle for utility procurement was underscored by the statement that "[u]tility-owned resources *that are selected in a solicitation* will be eligible for Cost-of-Service ratemaking (future plant additions, annual O&M expenses, etc.)."[6]

Thus, in terms of procurement policy and implementation, the key goals and objectives in D.04-12-048 included the following:

- Fair, vigorous competition between utility- or affiliate-sponsored projects (including turnkey projects) and projects sponsored by independent power producers ("IPPs");
- Application of an open, transparent, and competitive procurement process; and
- Use of an independent, third-party evaluator in utility procurements when the utility's (or the utility's affiliate's) own projects were involved.

B. <u>How does the implementation of the hybrid market structure compare against these goals and objectives? Are utility procurements open, transparent, and competitive?</u>

Answering the key question of whether utility procurements are open and competitive is difficult, because they certainly are not transparent. But even the limited public information that is available sheds some light on whether utility procurements are open and competitive and how well the hybrid market structure meets the goals articulated by the Commission in D.04-12-048.

For example, a review the results of the various all-source procurements to date clearly indicates that competitive procurement practices have not been adopted by the utilities. As shown in the table below, of the 2,755 MW of non-renewable resources that have been

[5] D.04-12-048, p. 127.
[6] D.04-12-048, p. 129 (emphasis added).

procured, less than half have been secured through a competitive process. Of the 1,173 MW that were procured competitively, half (Palomar and RAMCO) were utility-turnkey projects whose purchase price will become part of the utility rate base.

Summary of Procurement for Non-Renewable New Resources (2003-2005) Resulting in New Contracts Approved or Under Review at the CPUC

	Year Approved	Competitive Solicitation	Ownership Type	Capacity (MWs)	
Mountainview[7]	**2003**	**No-**	**Utility Affiliate; Contract mimics cost-of-service ratemaking**	**1,052**	**Approved**
Palomar	**2004**	**Yes**	**Utility (Turnkey)**	**555**	**Approved**
RAMCO Project	**2004**	**Yes**	**Utility (Turnkey)**	**45**	**Approved**
Otay Mesa	**2004**	**Yes**	**PPA**	**573**	**Under review**
Contra Costa 8	**2005**	**No**	**Utility-Owned**	**530**	**Under Review**

The table above demonstrates that competitive procurements are not occurring under the hybrid market structure as envisioned.

- More than half (58%) of the MWs procured during the 2003-2005 timeframe were procured outside of an open, competitive solicitation.
- IPP ownership represents only a fifth of the MWs (20%) . Importantly, unlike any other projects selected in the utility RFOs, the lone IPP project selected in the utility RFOs (Otay Mesa) faced a series of contingencies that needed to be addressed prior to execution of the PPA.

[7] The Mountainview application was decided before D.04-12-048 was rendered.

What is the effect of the utilities' dominance of procurement? The fact that utilities have been able to get their resources approved, even though they were selected outside of a competitive procurement process, has a chilling effect on future nonutility investment in generation. Most importantly, while perhaps 3,000 MW (non-renewable and renewable) have been contracted for during the 2003-2005 period by the utilities, the current procurement structure is barely keeping up with load growth: procurement is not being implemented at a pace that will ward off what appears to be looming shortages of energy in the very near future, particularly if California is faced with above-normal temperatures on a regional basis. Thus, IEP questions whether these outcomes are consistent with the expectations, goals and objectives articulated in D.04-12-048.

C. How does the implementation of the hybrid market structure compare against these goals and objectives? Are utility procurements subject to rigorous independent review?

Most information related to the utilities' all-source solicitations is heavily redacted. Thus, there is little public information to help analyze these procurements from the perspective of whether or not the hybrid market structure may be characterized by knowledgeable, independent evaluation of utility procurements.

Fortunately, a little more information exists related to renewable procurements due to recent reports filed by the utilities regarding their Renewable Procurement Plans 2005-2014. While still heavily redacted, the Redacted Public Versions of these reports provide some insights into what has occurred to date under the current procurement and hybrid market structure. SCE reported the following in its Supplement to its Renewable Procurement Plan 2005-2014:

> It is now clear that **at least six of the eight contracts** that SCE signed contracts with as a result of its 2003 interim solicitations **will require substantial transmission upgrades**… When SCE's

> Plan was filed in March 2005, SCE had executed five of the eight contracts that resulted from its 2003 solicitation, the **projects did not have final locations**, and the **studies to determine the transmission needs of the projects had not yet begun.**[8]

In other words, SCE selected "winners" in its renewable procurement, using the "Least-Cost/Best-Fit" methodology in which generation location and transmission requirements are to be considered in an integrated manner, such that the 80% of "winning" bidders had no sites on which to build and no transmission with which to deliver their power as needed by SCE.

The renewable procurements are often touted as an example of how well the current procurement model (and by association the hybrid-market structure) is working and how the PRG provides an essential independent oversight function. However, based on the track record so far, IEP questions whether even the renewable procurement function is working well under the current model. If the utilities (and presumably the PRG serving as the knowledgeable independent evaluator) cannot assess such basic matters as site control, generation, and transmission on an integrated basis, then how are they implementing the California Renewable Portfolio Standard ("RPS") or any other competitive procurement process? Why is it that even the renewable procurements under the hybrid market structure appear to be ineffective in bringing on new generation infrastructure? Is there something inherent in the hybrid market structure that impedes success in these procurements? These questions and concerns are ripe for discussion, and the Commission's 2006 procurement proceeding is the proper forum to address them. RPS compliance, Resource Adequacy Resource compliance, and general grid reliability depend on the determination of whether the current hybrid market structure provides the proper incentives to achieve the primary procurement goals and objectives envisioned in D.04-12-048.

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[8] Southern California Edison Company's Supplement to Its Renewable Procurement Plan: 2005-20014 [REDACTED PUBLIC VERSION], January 7, 2005, at p. 2-3 (emphasis added).

II. CONCLUSION

While IEP was cautiously willing to accept the hybrid market structure when originally adopted, IEP's optimism stemmed from the strong pro-competition, pro-transparency language in D.04-12-048. Based on the track record of the hybrid market, however, IEP now recognizes that the inherent flaws in a hybrid market system likely make a competitive, transparent procurement process unattainable in California. It is now timely for the Commission to revisit and review the hybrid market structure. Contrary to utility assertions, the hybrid market structure is not working well.

The 2006 procurement proceeding provides the opportunity for this much needed review, and this opportunity should not be missed. RPS compliance is clearly at risk. Resource adequacy compliance will be next, if an efficient, competitive wholesale procurement model is not quickly implemented in California in 2006. Alternatives and remedies to the hybrid market structure, called for by several parties in this proceeding, should receive a full and thorough vetting in this proceeding, with the Commission then deciding on the solutions that best serve the interests of California energy consumers.

Respectfully submitted this January 12, 2006 at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 12th day of January 2006 caused a copy of the foregoing **REPLY COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION (IEP) TO POST-WORKSHOP COMMENTS REGARDING NEXT STEPS IN PROCUREMENT PROCEEDING; R.04-04-003** to be served to the parties below by Hand Delivery.

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I declare under penalty of perjury that the foregoing is true and correct.

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