

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

06-21-10  
04:59 PM

Order Instituting Rulemaking to Integrate and Refine  
Procurement Policies and Consider Long-Term  
Procurement Plans

Rulemaking 10-05-006  
(Filed May 6, 2010)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION ON JUNE 11 WORKSHOPS**

**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, CA 94111  
Telephone: (415) 392-7900  
Facsimile: (415) 398-4321  
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers  
Association

Date: June 21, 2010

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Pursuant to the schedule established in the May 28, 2010 ruling of Administrative Law Judge (ALJ) Victoria Kolakowski, the Independent Energy Producers Association (IEP) submits its comments on the June 11 workshops on long-term procurement plan (LTPP) planning standards and the Procurement Rulebook.

Even after the ALJ offered clarifications at the June 14 prehearing conference, IEP still finds that it is unclear about the basic processes that will be followed in this proceeding, and IEP understands that other parties are similarly uncertain. Parties need to have a clear understanding early in this proceeding of what topics will be discussed in each track, what issues will *not* be discussed in a particular track, what opportunities exist for parties to comment on issues, and when decisions will be made on certain issues. Accordingly, some of IEP's comments are requests for clarification. IEP will also offer more substantive comments.

**I. COMMENTS ON THE PLANNING STANDARDS**

IEP offers the following brief comments on the planning standards:

**Base Case:** The role of the base case is not entirely clear. If the base case is intended as a "dummy" case to be used to facilitate comparisons with other scenarios and across

utilities, then the precise assumptions that make up the base case become relatively less critical. On the other hand, if the base case is intended to describe an expected or preferred case, then the individual assumptions require close scrutiny, and parties must have a fair opportunity to dispute the assumptions and offer alternatives for the Commission to consider. If the parties were expected to present their proposed assumptions and alternatives in the comments due on June 11, the two weeks (including a holiday) between the issuance of the Energy Division proposals and the date of the workshops were not sufficient time to allow the parties a reasonable opportunity to develop and propose alternative assumptions.

**Sensitivity Analyses:** The Energy Division presentation at the June 11 workshop indicated that sensitivities will be conducted only on the Base Case scenario for the System Plans. The Energy Division also assumes that the resource portfolio and dispatch will not change under any probable change of conditions.<sup>1</sup> The reasons for these restrictions are not clear, and parties should not be foreclosed from presenting scenarios under which dispatch and the composition of the resource portfolios could change in response to changing conditions. In IEP's view, information about how a portfolio performs and responds to changing conditions, *e.g.*, natural gas price volatility or import restrictions, is an extremely valuable input into the process of selecting one portfolio over another.

The Energy Division presentation also noted that sensitivity analysis of portfolio costs would be limited to four broad categories.<sup>2</sup> In particular, Energy Division clarified that the sensitivity of Portfolio Costs to "need determination" would be based on changes in load forecasts. IEP is concerned that other factors, such as energy efficiency, demand response, and

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<sup>1</sup> Energy Division Presentation on LTPP Planning Standards, slide 27.

<sup>2</sup> Energy Division Presentation on LTPP Planning Standards, slide 53.

unit retirements, could affect need determination and ultimately portfolio costs. The Commission should not limit sensitivity analysis of portfolio costs in this manner at this stage of the proceeding.

**Once-Through Cooling:** The effect of the State Water Resources Control Board’s restrictions on OTC in power plants will be one of the central issues in the LTPP proceeding. For one key implication of OTC—retirements—the Scoping Memo, expected to be issued in late July or August, will “specify an approach for plant retirements consistent with OTC policy.”<sup>3</sup> What is unclear is when parties—especially the owner of power plants that are directly affected by the OTC restrictions—will have a chance to dispute the approach endorsed by the Scoping Memo. If the resource plans are to be “informed by an open and transparent process,”<sup>4</sup> there must be a significant opportunity for parties to react to the approach to OTC specified in the Scoping Memo. More fundamentally, there must be an opportunity for the full Commission, and not just the Assigned Commissioner, to decide an issue of this significance.

## **II. COMMENTS ON THE PROCUREMENT RULEBOOK**

At the prehearing conference, the ALJ summarized the two incompatible visions of the Rulebook. Is the Rulebook intended to be a useful compendium of the Commission’s numerous decisions on procurement-related issues? Or is the Rulebook intended to be a new scripture on procurement that would supersede any conflicting language or inferences in the actual procurement decisions that adopted the rules?

Until the prehearing conference, IEP had always understood that the Rulebook was to be a useful compendium of the Commission’s procurement decisions, but not a document

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<sup>3</sup> Energy Division Presentation on LTPP Planning Standards, slide 42.

<sup>4</sup> Energy Division Presentation on LTPP Planning Standards, slide 7.

that would have any greater authority than the decisions that it attempted to summarize. IEP was surprised to hear at the prehearing conference that some parties, including Energy Division, thought the Rulebook should become, in essence, a superseding Commission decision on procurement policy and practice.

The danger of the latter approach is that the Rulebook, at least initially, is a *summary* of the Commission's decisions. Any summary, however, cannot do full justice to the text of the decision that explains the basis and logic for the rule and provides the context in which the rule was developed. IEP does not doubt the sincerity, intelligence, or abilities of the individuals that undertook the task of reducing the Commission's decisions to concise rules, but the fact remains that condensing a 100-page decision into a few sentences cannot convey the full flavor and meaning of the decision.

Useful analogies abound in the world of law. Many scholars have attempted to develop summaries of the case law on certain topics, and many of the resulting compendiums are very useful and highly regarded. But even the most revered compendiums—such as Witkin's Summary of California Law—do not supersede or replace the opinions that are the basis for the summary. The opinions speak for themselves, and any attempt to condense or paraphrase their contents runs the risk of oversimplification or distortion.

The Rulebook should perform a similar function to the legal compendiums. It should be a concise and useful presentation of the rules developed in the Commission's decisions and relevant statutes. But it should not be afforded a higher status than the decisions themselves.

### **III. CONCLUSION**

For the reasons stated in these comments, IEP respectfully urges the Commission to:

- Clarify the role of the base case;

- Allow an opportunity to present scenarios that allow the dispatch and composition of scenarios to change in response to changing conditions;
- Allow additional factors other than changes in load forecasts to test the sensitivity of need determination;
- Provide parties with a reasonable opportunity to comment on the approach to Once-Through Cooling specified in the Scoping Memo;
- Clarify that the Procurement Rulebook is a compendium of the Commission's decisions on procurement, not a superseding decision on procurement policy and practice.

Respectfully submitted this 21st day of June, 2010 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

By  /s/ Brian T. Cragg  
Brian T. Cragg

Attorneys for the Independent Energy  
Producers Association

**CERTIFICATE OF SERVICE**

I, Melinda LaJaunie, certify that I have on this 24<sup>th</sup> day of June 2010 caused a copy of the foregoing

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ASSOCIATION ON JUNE 11 WORKSHOPS**

to be served on all known parties to R.10-05-006 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

Commissioner President Michael R. Peevey  
California Public Utilities Commission  
State Building, Room 5218  
505 Van Ness Avenue  
San Francisco, CA 94102

ALJ Victoria S Kolakowski  
California Public Utilities Commission  
State Building, Room 5042  
505 Van Ness Avenue  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24<sup>th</sup> day of June 2010 at San Francisco, California.

/s/ Melinda LaJaunie  
Melinda LaJaunie

Service List – R.10-05-006  
(Updated June 18, 2010)

ANDREW B. BROWN  
abb@eslawfirm.com

ABRAHAM SILVERMAN  
abe.silverman@nrgeenergy.com

AUDREY CHANG  
achang@efficiencycouncil.org

Anne Gillette  
aeg@cpuc.ca.gov

LINDA AGERTER  
agerterlinda@gmail.com

ANTHEA LEE  
AGL9@pge.com

AMBER WYATT  
amber.wyatt@sce.com

AIMEE M. SMITH  
AMSmith@SempraUtilities.com

ARTHUR O'DONNELL  
arthur@resource-solutions.org

ANN L. TROWBRIDGE  
atrowbridge@daycartermurphy.com

ALICE GONG  
AxL3@pge.com

BO BUCHYNSKY  
b.buchynsky@dgc-us.com

MATTHEW BARMACK  
barmackm@calpine.com

BRIAN T. CRAGG  
bcragg@goodinmacbride.com

WILLIAM B. MARCUS  
bill@jbsenergy.com

SCOTT BLAISING  
blaising@braunlegal.com

BARRY F. MCCARTHY  
bmcc@mccarthylaw.com

BRUCE PERLSTEIN, PH.D  
bperlste@pacbell.net

BARBARA R. BARKOVICH  
brbarkovich@earthlink.net

BRIAN THEAKER  
brian.theaker@dynergy.com

CASE ADMINISTRATION  
case.admin@sce.com

CALIFORNIA ENERGY MARKETS  
cem@newsdata.com

Charlyn A. Hook  
chh@cpuc.ca.gov

Lily Chow  
cho@cpuc.ca.gov

CYNTHIA K. MITCHELL  
ckmitchell1@sbcglobal.net

CLARE LAUFENBER GALLARDO  
claufenb@energy.state.ca.us

Chloe Lukins  
clu@cpuc.ca.gov

CAROLYN M. KEHREIN  
cmkehrein@ems-ca.com

REGULATORY FILE ROOM  
CPUCcases@pge.com

DOCKET COORDINATOR  
cpucdockets@keyesandfox.com

CHARLES R. MIDDLEKAUFF  
crmd@pge.com

CYNTHIA BRADY  
cynthia.brady@constellation.com

DANIELLE OSBORN MILLS  
Danielle@ceert.org

DEBORAH N. BEHLES  
dbehles@ggu.edu

David Peck  
dbp@cpuc.ca.gov

DOUGLAS DAVIE  
ddavie@wellhead.com

DEANA MICHELLE NG  
deana.ng@sce.com

DONALD E. BROOKHYSER  
deb@a-klaw.com

DEVIN MCDONELL  
devin.mcdonell@bingham.com

DONALD GILLIGAN  
dgilligan@naesco.org

DIANE I. FELLMAN  
Diane.Fellman@nrgeenergy.com

DAVID MARCUS  
dmarcus2@sbcglobal.net

DON VAWTER  
Don.Vawter@AES.com

DANIEL DOUGLASS  
douglass@energyattorney.com

DIANA SANCHEZ  
dsanchez@daycartermurphy.com

DEVRA WANG  
dwang@nrdc.org

SHANNON EDDY  
eddyconsulting@gmail.com

EVELYN KAHL  
ek@a-klaw.com

KAREN TERRANOVA  
filings@a-klaw.com

GREG BASS  
GBass@SempraSolutions.com

GREGG MORRIS  
gmorris@emf.net

GEORGE ZAHARIUDAKIS  
GxZ5@pge.com

IVIN RHYNE  
irhyne@energy.state.ca.us

L. JAN REID  
janreid@coastecon.com

JASMIN ANSAR  
jansar@ucsusa.org

JASON ARMENTA  
jarmenta@calpine.com

JERRY R. BLOOM  
jbloom@winston.com

JENNIFER CHAMBERLIN  
JChamberlin@LSPower.com

JEFFREY P. GRAY  
jeffreygray@dwt.com

JAMES L. FILIPPI  
jfilippi@nextlight.com

JOSHUA ARCE  
josh@brightlinedefense.org

Jordan Parrillo  
jp6@cpuc.ca.gov

JOHN A. PACHECO  
JPacheco@SempraUtilities.com

JIM WOODWARD  
jwoodward@energy.state.ca.us

Kevin R. Dudley  
kd1@cpuc.ca.gov

KEVIN WOODRUFF  
kdw@woodruff-expert-services.com

KEVIN T. FOX  
kfox@keyesandfox.com

KEVIN J. SIMONSEN  
kjsimonsen@ems-ca.com

Karl Meeusen  
kkm@cpuc.ca.gov

Service List – R.10-05-006  
(Updated June 18, 2010)

AVIS KOWALEWSKI  
kowalewskia@calpine.com

Karen P. Paull  
kpp@cpuc.ca.gov

KRISTIN BURFORD  
kristin@consciousventuresgroup.com

LISA A. COTTLE  
lcottle@winston.com

LISA DECARLO  
ldecarlo@energy.state.ca.us

DON LIDDELL  
liddell@energyattorney.com

LUCAS WILLIAMS  
williams@ggu.edu

LAURA WISLAND  
lwisland@ucsusa.org

MARYBELLE ANG  
mang@turn.org

MARCEL HAWIGER  
marcel@turn.org

MARTIN HOMECE  
martinhomece@gmail.com

MARY LYNCH  
mary.lynych@constellation.com

MARY C. HOFFMAN  
mary@solutionsforutilities.com

MATTHEW FREEDMAN  
matthew@turn.org

MARC D. JOSEPH  
mdjoseph@adamsbroadwell.com

MELISSA DORN  
mdorn@mwe.com

MICHEL PETER FLORIO  
mflorio@turn.org

MICHAEL E. BOYD  
michaelboyd@sbcglobal.net

MICHAEL JASKE  
mjaske@energy.state.ca.us

MICHAEL G. NELSON, ESQ.  
mnelson@mccarthyllaw.com

MICHAEL P. ALCANTAR  
mpa@a-klaw.com

B. MARIE PIENIAZEK  
mpieniazek@drenergyconsulting.com

MRW & ASSOCIATES, LLC  
mrw@mrwassoc.com

MONA TIERNEY-LLOYD  
mtierney-lloyd@enemroc.com

MARK W. ZIMMERMANN  
MWZ1@pge.com

MICHAEL A. YUFFEE  
myuffee@mwe.com

Noel Obiora  
nao@cpuc.ca.gov

NORA SHERIFF  
nes@a-klaw.com

NOAH LONG  
nlong@nrdc.org

Nika Rogers  
nlr@cpuc.ca.gov

Nathaniel Skinner  
nws@cpuc.ca.gov

PATRICK G. MCGUIRE  
patrickm@crossborderenergy.com

PAUL CORT  
pcort@earthjustice.org

PHILLIP MULLER  
philm@scdenergy.com

RAFI HASSAN  
rafi.hassan@sig.com

Ronald R. Beall  
rb2@cpuc.ca.gov

RORY COX  
rcox@pacificenvironment.org

CASE COORDINATION  
RegRelCPUCCases@pge.com

Robert L. Strauss  
rls@cpuc.ca.gov

Rahmon Momoh  
rmm@cpuc.ca.gov

ROBERT GEX  
robertgex@dwt.com

REED V. SCHMIDT  
rschmidt@bartlewells.com

ANNIE STANGE  
sas@a-klaw.com

SEAN P. BEATTY  
Sean.Beatty@mirant.com

SIERRA MARTINEZ  
smartinez@nrdc.org

SARA STECK MYERS  
ssmyers@att.net

STEVEN HUHMANN  
steven.huhmann@morganstanley.com

STEVEN KELLY  
steven@iepa.com

SUE MARA  
sue.mara@rtoadvisors.com

Sean A. Simon  
svn@cpuc.ca.gov

TIM LINDL  
tjl@a-klaw.com

TODD EDMISTER  
todd.edmister@bingham.com

R. THOMAS BEACH  
tomb@crossborderenergy.com

VIDHYA PRABHAKARAN  
vidhyaprabhakaran@dwt.com

VICTORIA LAUTERBACH  
vlauterbach@mwe.com

Victoria S Kolakowski  
vsk@cpuc.ca.gov

WILLIAM H. BOOTH  
wbooth@booth-law.com

BARBARA GEORGE  
wem@igc.org

BRAD WETSTONE  
wetstone@alamedamp.com

WILLIAM MITCHELL  
will.mitchell@cpv.com

WENDY KEILANI  
WKeilani@SempraUtilities.com

WILLIAM B. ROSTOV  
wrostov@earthjustice.org

Rebecca Tsai-Wei Lee  
wtr@cpuc.ca.gov

Yuliya Shmidt  
ys2@cpuc.ca.gov

ROBERT E. BURT  
INSULATION CONTRACTORS ASSN.  
4153 NORTHGATE BLVD., NO.6  
SACRAMENTO, CA 95834

TAM HUNT  
Fit Coalition  
16 PALM CT.  
MENLO PARK, CA 94025

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