

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



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

Rulemaking 12-03-014
(March 22, 2012)

**MOTION OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION FOR RECONSIDERATION OF SCOPING MEMO
TO COORDINATE SCHEDULES**

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Two recent Scoping Memos issued eight days apart in two closely related proceedings have put the Independent Energy Producers Association (IEP) and other parties in these proceedings in the untenable position of having to be two places at once. Specifically, the *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (LTPP Scoping Memo) issued by Commissioner Florio and Administrative Law Judge Gamson on May 17, 2012 in this proceeding (Rulemaking (R.) 12-03-014, the Long-Term Procurement Plan (LTPP) proceeding), and the *Assigned Commissioner's Scoping Memo and Ruling* (Oakley Scoping Memo), issued by President Peevey on May 25, 2012 in Application (A.) 12-03-026, the Oakley proceeding, scheduled evidentiary hearings for overlapping days. IEP moves for reconsideration of these Scoping Memos so that the schedule for evidentiary hearings in these two proceedings may be coordinated to allow and promote effective participation by affected parties. IEP is also presenting a similar motion in A.12-03-026 to provide the procedural vehicles to accomplish this coordination.

The LTPP Scoping Ruling set evidentiary hearings on Track 1 (Local Reliability) issues for August 7-10 and August 13-17, 2012. The Oakley Scoping Memo set evidentiary hearings for August 15-17, 2012. IEP is active in both proceedings and will be intensively involved in both sets of hearings. IEP is represented by the same attorney in both proceedings, and IEP intends to use the same experts in the two proceedings because of their overlapping issues. Furthermore, at least two other parties, the Western Power Trading Forum and the Alliance for Retail Energy Markets (WPTF/AReM), are jointly represented by the same attorney in the two proceedings. Obviously, it is physically impossible for a single attorney to be in two proceedings at the same time,¹ and the effectiveness of that attorney's ability to represent his client is significantly threatened if he is forced to shuttle between two hearing rooms in an effort to participate in both hearings.

When the schedule for hearings was discussed at the prehearing conference in the Oakley proceeding on May 22, it was noted that some of the dates under consideration, specifically August 15-17, overlapped with schedule for the LTPP hearings established on May 17 by the LTPP Scoping Memo. It was also noted that the LTPP hearings might not consume all of the nine reserved days, and that the LTPP hearings might conclude before August 15. That hopeful speculation, which appears to have supported the schedule adopted in the Oakley Scoping Memo, was dashed when opening testimony was filed in the LTPP proceeding on June 25, 2012. At least 19 parties and 26 witnesses submitted detailed opening testimony on Track 1 issues. Moreover, the Track 1 issues extend well beyond the narrow issue of local reliability. Track 1 issues include the role of flexible capacity attributes in meeting local reliability needs; assumptions about retirement of once-through cooled (OTC) plants; the role of the studies

¹ The overlapping briefing schedule for the two proceedings will also be challenging for the parties with a single attorney in both proceedings, but at least it is physically possible to focus on one brief at a time rather than drafting two at the same instant.

performed by the California Independent System Operator (CAISO) in the LTPP; the contribution of uncommitted energy efficiency, demand response, energy storage and distributed generation in meeting reliability needs; and the allocation of the costs of meeting local reliability needs, among other topics. In consideration of the overall breadth and complexity of the issues in Track 1 and the number of parties and witnesses presenting testimony, it is no longer prudent to continue to assume that the LTPP hearings will conclude early. Thus, it is now clear that the evidentiary hearing schedules in the two proceedings are in direct conflict.

To further complicate things, the issues and subject matter of the Oakley and LTPP proceedings overlap considerably. Track 1 of the LTPP will consider, among other issues, whether flexible capacity attributes should be part of the assessment of local reliability needs for 2014-2021, whether the CAISO's studies should form the basis for the Commission's assessment of the need for additional local capacity, and whether there should be rules for procurement of additional local reliability needs not covered by existing rules.² Pacific Gas and Electric Company (PG&E) justifies entering into an agreement to purchase the Oakley project on the grounds that it offers additional capacity in a local resource area³ (the Oakley Project is located in the Greater Bay Area local reliability area), and provides flexible operating characteristics that (according to PG&E) various CAISO studies indicate are needed to respond to an increasing proportion of renewable generation in California and the retirement of OTC plants and removal of their operating flexibility. PG&E also asserts that California will need this sort of additional flexible capacity by 2016, when the Oakley Project is scheduled to come online, even in the absence of an express need determination in the LTPP. The Oakley Scoping Memo recognizes the interaction with the LTPP proceeding and in its list of issues poses the question, "Is there a

² LTPP Scoping Memo, pp. 5-6.

³ Application 12-03-026, p. 1.

need to procure new [utility-owned generation] outside of the Commission's on-going long-term procurement process (LTPP) and in exception to Commission policies and precedents regarding long-term procurement?"

Thus, there is a critical need to coordinate the schedules for evidentiary hearings in these two proceedings. IEP respectfully suggests that the evidentiary hearings scheduled in the Oakley proceeding should be rescheduled to give IEP and other similarly-situated parties sufficient time and a reasonable opportunity to participate in both the Oakley proceeding and the LTPP proceeding.

The reason for altering the Oakley schedule rather than the LTPP schedule is that issues in the Oakley proceeding are not as time-sensitive as those in the LTPP proceeding.

According to the LTPP Scoping Memo:

Both the settlement agreement adopted in D.12-04-046 and a number of parties in their comments maintain that it is important for the Commission to finalize a decision allowing or requiring procurement of new resources in local areas to meet future capacity requirements (possibly including flexible attributes) by or near the end of 2012. A decision in this timeframe would allow any new capacity to be built in a timely manner to meet future local capacity area needs, including integrating system variability. . . . A Commission decision at or near the end of 2012 will allow the process to begin in 2013. We hereby set a schedule to allow for a decision at or near the end of 2012 by the Commission.⁴

There is very little flexibility available in the schedule for Track 1 of the LTPP proceeding if the Commission intends to reach a decision by the end of 2012.

On the other hand, there has been no substantiation of the claimed need for a decision in the Oakley application by the end of the year. PG&E has implicitly acknowledged that a year-end decision in the Oakley proceeding is not required. At the prehearing conference

⁴ LTPP Scoping Memo, pp. 6-7.

on the Oakley application, PG&E argued strenuously that a year-end decision was crucial. The Administrative Law Judge (ALJ) directed PG&E to file a motion specifically identifying the contingencies in the Purchase and Sale Agreement between PG&E and the developers of the Oakley Project or elsewhere that have drop-dead dates that affect the schedule; in other words, to explain with specific references why a decision before the end of the year was necessary. Given that opportunity, PG&E responded by informing the ALJ and the parties that it would not file such a motion, which in effect constitutes PG&E's acknowledgement that it cannot demonstrate the need for a decision this year.

For these reasons, IEP respectfully urges the Commission and the Assigned Commissioners to grant IEP's motions to reconsider the Scoping Memos and, at a minimum, to coordinate the schedules for the evidentiary hearings in these proceedings. For the reasons stated in this motion, IEP recommends rescheduling the hearings in the Oakley proceeding so that the more critical work taken up in Track 1 of the LTPP proceeding can continue efficiently and with the full participation and contribution of IEP and similarly situated parties. Because the dates for the hearings are rapidly approaching and the scheduled start of the LTPP proceeding hearings is only about five weeks away, IEP respectfully urges the Assigned Commissioners to act on these motions expeditiously.

Respectfully submitted this 2nd day of July, 2012 at San Francisco, California

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