

**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.

Rulemaking 04-04-003  
(Filed April 1, 2004)

**ASSIGNED COMMISSIONER'S RULING  
DETAILING HOW THE CALIFORNIA ENERGY COMMISSION  
2005 INTEGRATED ENERGY POLICY REPORT PROCESS WILL BE USED IN  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION'S 2006 PROCUREMENT  
PROCEEDINGS AND ADDRESSING RELATED PROCEDURAL DETAILS**

**Summary**

This ruling addresses how the California Energy Commission (CEC) 2005 Integrated Energy Policy Report (IEPR) and the California Public Utilities Commission (CPUC) 2006 procurement proceedings will be coordinated, providing the further information referenced in the Assigned Commissioner's Ruling (ACR) issued September 16, 2004.

Today's ruling: 1) provides notice to a broad range of stakeholders, including consumer and ratepayer interests (who regularly participate in procurement-related proceedings) of the issues to be addressed in the 2005 IEPR and how they will flow into the 2006 procurement proceeding, including guidance on the extent to which the CPUC will allow updating of information determined in the CEC's IEPR proceeding consistent with its stated goal not to re-examine specified issues resolved during the IEPR process; 2) identifies the contents of the Transmittal Report and related products the CEC will prepare at

the conclusion of the 2005 IEPR for transmittal to the CPUC for use in its 2006 procurement proceedings, including identifying the materials and information the CEC will consider in creating, and its procedure for creating, the Transmittal Report; and 3) proposes a method for awarding compensation to intervenors who participate both in the 2005 IEPR and subsequently, in the 2006 procurement proceeding.

### **Background**

As noted in the September 16 ACR, CPUC and CEC interagency staff have been working together to devise a plan to integrate the activities of the CPUC's long-term resource planning process and the CEC's IEPR process. The September ACR set forth a vision in which CEC's 2005 IEPR would be the initiation of a new, integrated, statewide resource planning process. Among other things, the ACR provided the following:

“We view the CEC's IEPR process, in particular, as the appropriate venue for considering issues of load forecasting, resource assessment, and scenario analyses, to determine the appropriate level and ranges of resource needs for load serving entities (LSEs) in California.” (ACR, p. 2.)

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“We expect that all LSEs will provide their load forecasts, resource plans, and planning expertise to the CEC in its IEPR process. For our part, pursuant to, *inter alia*, Section 25302(f) of the Public Resources Code, we intend to rely on the CEC's need determinations made in the IEPR process, and we do not intend to reexamine the range of need based on scenario analyses in our biennial review of utility long-term plans beginning in 2006. Except as required by

Section 25302(f)<sup>1</sup> or other applicable law, or as necessary to evaluate for any updates or changes that might be required on the basis of additional information that was unavailable for submission to the CEC during the IEPR cycle, we do not intend to reevaluate the range of need based on load or resource assessments by LSEs in the context of our procurement proceedings or long-term plan review. Thus, interested stakeholders that wish to engage in analysis of LSE resource needs, load forecasts, or scenario planning should do so in the context of the CEC's IEPR process." (*Id.*, pp. 2-3.)

The September ruling provided initial general guidance, and committed to provide more detail of the exact topics to be addressed in each venue as the planning process unfolds. This ruling provides that additional detail. This ruling does not, however, purport to summarize all of the activities or issues that will be examined in the 2005 IEPR or the 2006 procurement proceeding. Rather, the focus here is only on the manner in which the two proceedings overlap and will be coordinated.

### **Notice and Guidance on the Extent to Which Re-Examination of Issues is Appropriate During the 2006 Procurement Proceedings**

While the September 16 ACR clearly directed parties interested in addressing issues of load forecasting, resource assessment, and scenario analyses

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<sup>1</sup> Section 25302(f) reads as follows: "The [CEC] shall provide the [IEPR] to the Public Utilities Commission, the Office of Ratepayer Advocates, the State Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, and the Department of Transportation. For the purpose of ensuring consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state, those entities shall carry out their energy-related duties and responsibilities based upon the information and analyses contained in the report. If any entity listed in this subdivision objects to information contained in the report, and has a reasonable basis for that objection, the entity shall not be required to consider that information in carrying out its energy-related duties."

as part of the resource planning process in advance of the 2006 long-term resource plans to participate in the 2005 IEPR process, and noted that the CPUC does not intend to allow the re-examination of these specific matters in its 2006 proceeding, today's ruling reinforces that direction by providing notice of these facts to a broad array of stakeholders (including consumer, environmental, and ratepayer interests) who might ordinarily choose not to participate in the IEPR. To that end, today's ruling is served on all parties in this docket (R.04-04-003), as well as those specific proceedings known colloquially as the "umbrella proceedings" because they deal with the resource specific issues addressed in procurement proceedings.<sup>2</sup>

Today's ruling places all of these parties on notice of the matters to be addressed in the IEPR and of the fact that, with very narrow exceptions, we do not expect these matters to be open for review again during the CPUC's 2006 proceeding. We direct the parties' attention to the description of the 2005 process, especially those portions noting the interplay between the 2005 IEPR and 2006 procurement, which are described succinctly in the September 16 ACR: "CEC's 2005... IEPR process will estimate need for resource additions, evaluate policies and recommend appropriate resource strategies for the state to meet forecasted load on a biennial cycle. All load serving entities will provide load forecasts, resource plans and transmission assessment as input into the IEPR

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<sup>2</sup> R.01-08-028 (Energy Efficiency); R.04-04-025 (Avoided Cost and QF Pricing); R.03-10-003 (Community Choice Aggregation); I.00-11-001 (Transmission – AB 970); R.04-01-026 (Transmission Need Determination Issues); R.04-04-026 (Renewable Portfolio Standards); R.04-03-017 (Distributed Generation); and R.02-06-001 (Demand Response). Today's ruling is also served on the parties to R.04-01-025 (Gas Supply OIR).

process. The CAISO will provide the key policy issues and components of its transmission assessment processes. The IEPR will (1) identify likely range of statewide and LSE-specific need and resource assessment to be used by the CPUC when evaluating in IOU's long-term procurement plans for submittal in 2006 CPUC procurement process, (2) provide disaggregated load forecasts to CAISO for use by PTOs and CAISO in the next transmission cycle, and (3) recommend broad, statewide resource preference policies." (ACR, Attachment A.)

While the CPUC has not yet opened the new docket that will be the forum for its 2006 procurement process or provided specific details about how it will undertake its 2006 review, the CPUC has clearly stated that it views the CEC's 2005 IEPR process as the appropriate venue for considering issues of load forecasting, resource assessment, and scenario analysis to determine the appropriate level and ranges of resource needs for load serving entities (LSEs) in California and that, consistent with Section 25302(f) of the Public Resources Code, it intends to rely upon the CEC's range of need determinations made in the IEPR process, and to avoid re-examination of those need determinations (specifically, the level and nature of the residual net short for each utility) in its 2006 procurement proceedings or long-term plan review.<sup>3</sup>

In practical terms this means that in the 2005 IEPR, the CEC (after due and full consideration of the LSEs' showings, including LSE offered ranges of need) will identify a range of need (residual net short) based on its assessment of the

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<sup>3</sup> *Assigned Commissioner's Ruling on Interaction Between the CPUC Long-Term Planning Process and the California Energy Commission (CEC) Integrated Energy Policy Report (IEPR) Process*, issued September 16, 2004 in R.04-04-003.

LSEs' resource plans and load forecasts over the 2006-2016 planning horizon. In considering this information, the IEPR Committee will conduct public proceedings, including any hearings necessary pursuant to Pub. Util. Code § 1822, and prepare a draft Transmittal Report. The CEC will then transmit its determinations in these specified areas to the CPUC at the conclusion of the IEPR process.

With narrow exceptions consistent with Public Resources Code Section 25302(f), the CPUC will not provide an additional opportunity for parties to re-examine IEPR determinations during its 2006 procurement proceedings. Parties will not be permitted to present evidence, testimony, or argument that they presented, or could have presented, in the CEC's IEPR proceeding. We do anticipate, however, that some additional examination of evidence, testimony, or argument may be necessary to account for two categories of updated information in the 2006 proceeding, subject to further direction of the assigned ALJ during the course of that proceeding: (i) material new information that could not reasonably have been considered by the CEC during the 2005 IEPR, or (ii) materially changed circumstances.

### **The CEC's Transmittal Report**

Pursuant to Public Resources Code Section 25300 et seq., the CEC will prepare and formally adopt the 2005 IEPR in November of 2005. The CEC's IEPR Committee has agreed that CPUC staff will participate in the IEPR process as "collaborative staff," in the same manner in which CEC staff has participated in the CPUC's procurement and related proceedings over the course of the past year.

As part of the 2005 IEPR process, the CEC will also prepare a "Transmittal Report" for use by the CPUC in the 2006 procurement proceeding; that

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document will contain the specific information identified in Commissioner Peevey's ACR issued September 16, 2004, in R.04-04-003, and in D.04-12-048.

In preparing the Transmittal Report, the CEC will review the following:

- ◆ “Demand Forecast and Retail Electricity Price” and “Electricity Resources and Bulk Transmission.”  
([http://www.energy.ca.gov/2005\\_energypolicy/documents/index.html](http://www.energy.ca.gov/2005_energypolicy/documents/index.html));
- ◆ CEC staff’s evaluation of investor-owned utility (“IOU”) specific demand forecasts, including quantification of the effects of energy efficiency and demand response;
- ◆ CEC staff’s demand forecast, and a comparison of that forecast to the investor-owned utility-forecasts;
- ◆ CEC staff’s summary and assessment of IOU resource plans, taking into account the scenarios and uncertainties analyses;
- ◆ CEC staff’s statewide report on all of the resource plans filed as part of the IEPR process; and
- ◆ Filings and comments submitted by any IEPR participant interested in the CEC’s adoption of the likely range of statewide and LSE-specific need and resource assessments, and disaggregated load forecasts.

As noted above, in considering this information, the IEPR Committee will conduct public proceedings, including any hearings necessary pursuant to Pub. Util. Code § 1822, and prepare a draft Transmittal Report. The Transmittal Report will be based on the comments and information provided by all the participants regarding the issues, and will identify the likely range of statewide and LSE-specific need, a discussion of issues relevant to this determination, responses to participant comments, and a discussion of how the CEC decision was reached. It will also include an assessment of the compliance of the resource plans with policies adopted or supported by the CEC and the CPUC. This draft report will then be considered for adoption by the full Energy Commission at a public meeting in the fall of 2005.

### **Intervenor Compensation**

As the CPUC and the CEC more closely coordinate their resource proceedings to achieve both administrative efficiencies and to “ensur[e]

consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state” pursuant to Public Resources Code Section 25302(f), some parties who have participated in CPUC resource proceedings will also need to participate in the related CEC process and vice versa.

However, this direction towards efficiency and coordination may create a problem for intervenors. While the CPUC administers a comprehensive statutory program of intervenor compensation pursuant to Pub. Util. Code §§ 1801-1812, the CEC does not have comparable statutory authority to award compensation to intervenors who participate in its proceedings. Thus, parties who depend upon intervenor compensation, in whole or in part, to effectively participate in California’s resource planning process could be impeded in their ability to effectively participate in the coordinated interagency process.

In creating a more efficient and more effective resource planning and procurement process for California, it is not the intent of the CPUC or the CEC in any way to thwart or diminish the participation of intervenors. On the contrary, we seek to ensure that the creation of a coordinated procurement process does not disadvantage intervenor participation or deny the State the important benefits of that participation. We believe there is a way that the CPUC’s existing intervenor compensation program can fulfill this important need during the 2005 IEPR- 2006 procurement proceeding cycle, and we outline this proposal below.

Pub. Util. Code § 1801.3 (d) states the Legislature’s intent that “[i]ntervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions.” In the limited case of a CPUC resource procurement proceeding that is coordinated with a CEC IEPR proceeding pursuant to Public Resources

Code Section 25302(f), it is both reasonable and consistent with legislative intent to allow intervenor compensation for participation in the CEC IEPR process if the intervenor establishes that such participation ultimately led to a substantial contribution to the CPUC's resource procurement decision.<sup>4</sup> In other words, to the extent that intervenor participation in the 2005 IEPR process develops a fuller, more dynamic and more complete decisionmaking record relative to the specific information that is ultimately folded into the CPUC's 2006 procurement proceedings, where re-examination of the earlier record is circumscribed, it is in the public interest to do everything possible to facilitate such intervenor involvement. But such involvement may be inextricably linked with the ability to seek intervenor compensation for participation in specific issues addressed in the 2005 IEPR which will be folded into the 2006 procurement proceeding under the parameters outlined in the September 16 ACR.

For this reason, we believe that intervenors who participate in the 2005 CEC IEPR process should be able to request and receive compensation for that participation if they (1) also participate in the subsequent, coordinated CPUC procurement proceeding; (2) make a substantial contribution in that procurement proceeding; and (3) otherwise meet the statutory requirements for compensation. The intervenor need not make a substantial contribution to the IEPR proceeding itself; rather, to be compensable, the intervenor's participation must address some or all of the following specific topics, which will be addressed in the 2005

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<sup>4</sup> Of course, the various requirements of the intervenor compensation statutes, as well as Article 18.8 of the CPUC's Rules of Practice and Procedure, such as qualifying as a customer and making a showing of significant financial hardship, must also be met.

IEPR and ultimately folded into the CPUC's 2006 procurement proceedings: load forecasting, resource assessment, and scenario analysis.

For purposes of the 2005 CEC IEPR and the 2006 CPUC procurement proceedings, the following procedures are proposed to extend the intervenor compensation program to participation in the IEPR process:

1. Within 30 days of the date of this ruling, any intervenor who intends to participate in the CEC's 2005 IEPR process and the 2006 CPUC procurement proceedings and seek compensation for that participation should file a notice of intent to claim compensation (NOI) in the manner set forth in Pub. Util. Code § 1804(a) and consistent with the specifications outlined in this ruling. The NOI should be filed in this docket (R.04-04-003) and served on parties to R.04-04-003 and the CEC. Responses may be filed in accordance with Section 1804(a).
2. Within 60 days after CEC's IEPR 2005 report is issued, the intervenor shall file a request for compensation in R.04-04-003 in the manner set forth in Pub. Util. Code § 1804(c) and consistent with the specifications outlined in this ruling. The request, as well as any response to the request filed in accordance with Section 1804(c) should be served on parties to R.04-04-003 and the CEC.
3. Within 75 days after the intervenor files its request pursuant to Paragraph 2 above, the CEC will provide the Commission with its written assessment of the intervenor's substantial contribution (in the areas to be addressed in the 2006 procurement proceeding) to the IEPR process and the report. The assigned ALJ in R.04-04-003 or its successor will ensure that the CEC's written assessment is placed in the formal file and served on the parties to the proceeding. However, no written response to the CEC's assessment will be entertained.
4. The intervenor shall file its NOI in the 2006 CPUC procurement proceeding in accordance with Pub. Util. Code § 1804(a). Responses to the NOI are governed by § 1804(a).
5. Following the 2006 procurement decision, the intervenor shall file its compensation request in the 2006 procurement proceeding

docket(s) in accordance with Pub. Util. Code § 1804(c). This request shall incorporate the intervenor's previously filed request for compensation in the CEC IEPR process. Parties may file responses, again in accordance with § 1804(c).

6. In accordance with Pub. Util. Code § 1804(e), the CPUC will issue its decision on the intervenor's compensation request for both its participation in the 2005 IEPR process at the CEC and its participation in the 2006 procurement proceeding at the CPUC.

After opportunity for comment, the assigned ALJ will submit this proposed six-step process to the full Commission for its consideration and possible adoption in R.04-04-003. In anticipation of such possible adoption, and in view of the fact that the 2005 IEPR is underway (CEC Docket No. 04-IEP-01), today's ruling directs that the requirement for filing an NOI (see Paragraph 1 above) be fulfilled at this time.

**IT IS RULED** that:

1. In order to provide notice to the broadest possible array of parties who may be interested in the load forecasting, resource assessment, and scenario analysis issues which will be established in the 2005 IEPR and folded into the CPUC's 2006 procurement proceedings, this ruling is served on all parties in this docket (R.04-04-003), as well as those specific proceedings known colloquially as the procurement "umbrella proceedings," specifically R.01-08-028, R.04-04-025, R.03-10-003, R.00-11-001, R.04-01-026, R.04-04-026, R.04-03-017, R.02-06-001, and R.04-01-025, the gas supply OIR.

2. Today's ruling places all of these parties on notice of the matters to be addressed in the 2005 IEPR and of the fact that, with narrow exceptions, these matters will not be open for review again during the CPUC's 2006 procurement proceeding.

3. The CEC's 2005 IEPR process is the appropriate venue for considering issues of load forecasting, resource assessment, and scenario analysis to determine the appropriate level and ranges of resource need (residual net short) for load serving entities (LSEs) in California and, consistent with Section 25302(f) of the Public Resources Code, the CPUC intends to rely upon the CEC's 2005 IEPR need determinations and will avoid re-examination of those need determinations (specifically, the level and nature of the residual net short for each utility) in its 2006 procurement proceedings or long-term plan review. Parties will not be permitted to present evidence, testimony, or argument that they presented, or could have presented, in the IEPR proceeding. We do anticipate, however, that some additional examination of evidence, testimony or argument may be necessary to account for two categories of updated information in the 2006 procurement proceeding, as directed by the assigned ALJ: (i) material new information that could not reasonably have been considered by the CEC during the 2005 IEPR, or (ii) materially changed circumstances.

4. In considering issues of load forecasting, resource assessment, and scenario analysis, the CEC's IEPR Committee will conduct public proceedings, including any hearings necessary pursuant to Pub. Util. Code § 1822, and prepare a Transmittal Report. The Transmittal Report will be based on the comments and information provided by all the participants regarding these issues. It will identify the appropriate level and range of resource needs for load serving entities (LSEs) in California, a discussion of issues relevant to this determination, responses to participant comments, and a discussion of how the CEC's decision was reached.

5. Comments may be filed on a limited extension of the Commission's intervenor compensation program to participation in certain proceedings of the

California Energy Commission, as set forth in the foregoing discussion.

Comments are due March 25, 2005. Replies may be filed and are due March 31, 2005.

6. Within 30 days of the date of this ruling, any intervenor who intends to participate in both the CEC's 2005 IEPR process and the CPUC's 2006 procurement proceedings by addressing issues of load forecasting, resource assessment, and scenario analysis as part of the resource planning process in the 2005 IEPR to be folded into the CPUC's 2006 procurement proceedings, and to seek compensation for that participation, should file a notice of intent to claim compensation (NOI) in the manner set forth in Pub. Util. Code § 1804(a). The NOI should be filed in this docket (R.04-04-003) and served on parties and the CEC. Responses to the NOI are subject to § 1804(a).

Dated March 14, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

## CERTIFICATE OF SERVICE

I certify that I have this day served the attached Assigned Commissioner's Ruling Detailing how the California Energy Commission 2005 Integrated Energy Policy Report Process will be Used in the California Public Utilities Commission's 2006 Procurement Proceedings and Addressing Related Procedural Details on all parties of record in this proceeding or their attorneys of record and also on R.01-08-028; R.04-04-025; R.03-10-003; I.00-11-001; R.04-01-026; R.04-04-026; R.04-03-017; R.02-06-001; and R.04-01-025 by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide email addresses.

Dated March 14, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

## N O T I C E

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