



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

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Order Instituting Rulemaking to Review, Revise,
and Consider Alternatives to the Power Charge
Indifference Adjustment.

Rulemaking 17-06-026
(Filed June 29, 2017)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON THE PROPOSED PHASE 2 DECISION**

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I. INTRODUCTION

The California Public Utilities Commission (Commission) issued a proposed *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization* (PD) on April 5, 2021. The Power Charge Indifference Adjustment (PCIA) reform proceeding focuses largely on the allocation of the costs and benefits of existing power procurement contracts between the investor-owned electric utilities (IOUs) and other load-serving entities (LSEs). Consequently, IOUs, other LSEs, and ratepayer advocates have comprised most of the active parties in the proceeding.

As a trade association of independent power producers, including renewable energy project developers and operators, IEP's interest in PCIA reform lies in the effects reform efforts may have on the holders of existing power purchase contracts. IEP wishes to ensure that the portfolio optimization mechanisms adopted by the Commission do not, whether deliberately or inadvertently, disturb the terms of existing contracts between project developers/operators and

the IOUs in the absence of the freely given consent of the parties to the contract. Additionally, IEP opposes suggestions that market-sensitive information related to the renegotiation of existing contracts be revealed in the IOUs' reports on the results of their Requests for Information (RFIs) from existing contract holders.

II. TREATMENT OF EXISTING CONTRACTS AND CONFIDENTIALITY CONCERNS

The PD explains that the portfolio optimization process presented in the Final Report of the Working Group 3 Co-Chairs (Final Report) includes various voluntary allocations, mandatory allocations, and market offers of PCIA-eligible resources, which consist of the electricity generation facilities in the IOUs' portfolios at the time customers depart bundled service.¹ These references to allocations or offers of resources under existing contracts could be interpreted as implying that that existing contracts would be reassigned to the LSEs providing service to unbundled customers. However, reassignment without the consent of counterparties to the existing contracts.

Disturbance of existing contracts does not appear to be the intent of either the Working Group 3 Co-Chairs or the Commission. The Final Report of the Working Group 3 Co-Chairs (Final Report) includes respect for the terms of existing contracts as one its principles² and states that “[p]ortfolio optimization activities are not intended to undermine or negate the original terms of the contracts without both parties’ agreement.”³ The PD also affirms the Commission’s intent that the portfolio optimization processes will not affect the integrity of existing contracts,

¹ PD, pp. 8-9.

² Final Report, p. 12.

³ Final Report, p. 52.

but the Commission’s direction could be strengthened as we discuss below.⁴

While we align with the Final Report on preserving the terms of existing contracts, IEP opposes a suggestion in the Final Report regarding the results of the proposed Contract Assignment and Contract Modification RFI process.⁵ The Final Report recommends that the IOUs’ RFI reports include “a list of the Contract Assignment proposals rejected by the IOU and the rationale for each rejection” and “contracts currently in negotiation.”⁶ Including this information in the RFI reports could disclose market sensitive information and, consequently, may deter participation in such negotiations.

The PD discusses both concerns, raised by IEP and other parties, and concludes that “This decision does not affect the Commission’s policies regarding the integrity of existing RPS contracts or confidentiality.”⁷ IEP supports the PD’s conclusions on these matters, but unfortunately, the PD does not restate these determinations in either the Findings of Fact or Conclusions of Law. To ensure that the Commission’s directives concerning contract terms and confidentiality of RFI negotiations are clear, IEP suggests the following revisions to the Findings of Fact and Conclusions of Law. Additional language is shown bolded and underlined.

Findings of Fact

11. Neither the Voluntary Allocation nor the Market Offer process requires modifications to existing contracts between the IOUs and their counterparties.

12. Disclosure of information regarding the Contract Assignment or Contract Modification RFI proposals rejected by the IOUs, the rationales for the rejections, and contract reassignment or modification proposals currently under negotiation may reveal market sensitive information and is not necessary to oversee the RFI process.

Conclusion of Law

⁴ PD, p. 32.

⁵ IEP Comments on the Final Report, p. 2.

⁶ Final Report, p. 56.

⁷ PD, p. 32.

9. The IOUs should file and serve in this proceeding a joint report on the effectiveness of the RPS VAMOs and the RPS RFIs within 90 days of the last date that the IOUs' first Market Offers are held. This joint report should include each IOU's calculation of remaining shares and, if a large amount of shares remain, a proposal for addressing the remaining shares. The joint report should also include best practices and lessons learned from implementing the RPS VAMOs and the RPS RFIs. **The joint report should not include information on the Contract Assignment or Contract Modification RFI proposals rejected by the IOUs, the rationales for the rejections, and contract reassignment or modification proposals currently under negotiation.** The IOUs should host a joint workshop to discuss this report within 60 days of filing the report.

III. CONCLUSION

IEP appreciates the Commission's consideration of our comments. Inclusion of our recommended additions to the Findings of Fact and Conclusions of Law would alleviate concerns among current power purchase contract counterparties regarding the implications of the proposed decision on existing contracts and the potential disclosure of market sensitive information.

Respectfully submitted April 26, 2021 at Berkeley, California.

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