

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

Order Instituting Rulemaking To Develop an Electricity  
Integrated Resource Planning Framework and to  
Coordinate and Refine Long-Term Procurement  
Planning Requirements.

Rulemaking 16-02-007  
(Filed February 11, 2016)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY  
PRODUCERS ASSOCIATION ON THE RULING OF  
ASSIGNED COMMISSIONER AND ADMINISTRATIVE  
LAW JUDGE REQUESTING COMMENTS ON  
DISADVANTAGED COMMUNITIES AND OTHER  
ASPECTS OF SENATE BILL 350**

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In compliance with the schedule set forth in the Assigned Commissioner and Administrative Law Judge’s Ruling issued December 21, 2016 (Ruling) Requesting Comments on Disadvantaged Communities and other Aspects of Senate Bill 350, the Independent Energy Producers Association (IEP) is pleased to provide these reply comments.

At the outset, IEP emphasizes that the Commission’s primary role is that of an economic regulator, not an environmental regulator. Although the Commission occasionally considers environmental issues—for example, when it considers an application for a Certificate of Public Convenience and Necessity for construction of a new utility facility—its primary function and expertise is to assure that utility rates are just and reasonable. The Commission generally relies on other federal and state agencies to perform the environmental regulation of utility activities.

**Context is important with regards to energy planning, procurement, and impacts on disadvantaged communities.** The California Environmental Justice Alliance and Sierra Club

(“Joint Environmental Parties”)<sup>1</sup> state that dirty fossil fuel facilities in California are disproportionately located in disadvantaged communities. In addition, they argue that disadvantaged communities disproportionately bear adverse environmental health impacts from fossil fuel use.<sup>2</sup> These parties cite a study, “Minding the Climate Gap,” as the source for this latter conclusion.

The “Minding the Climate Gap” study focuses on stationary sources of fossil fuel emissions, namely refineries, cement producers, and electric generators. The study does not assess the fossil impacts from mobile sources associated with the transportation sector, which is widely viewed as the sector with the largest amount of emissions. Importantly, the study concludes that “Power plants in California may be the least harmful in terms of health impacts and least inequitably distributed by race.”<sup>3</sup> Moreover, when assessing the distribution of the Pollution Disparity Index for PM10, the list of the top 10 contributing facilities includes only one electric generator. The single listed electric generation facility is owned and operated by a publicly-owned utility not subject to the Commission’s jurisdiction.<sup>4</sup> When assessing the top ten percent of California’s major greenhouse gas-emitting facilities ranked by the Health Impacts Index, no electric generating facilities ranked in the top 14 facilities statewide.<sup>5</sup>

The “Minding the Climate Gap” study reveals that electric generators individually and the electric sector generally rank quite low with regards to fossil emissions in comparison to

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<sup>1</sup> By email to the Service List of R.16-02-007 at 5:00 pm on Friday, Feb 24, the California Environmental Justice Alliance and the Sierra Club re-filed Comments on Disadvantaged Communities and Distribution without Greenlining Institute, who is not currently a party to the proceeding.

<sup>2</sup> Comments of the California Environmental Justice Alliance, Sierra Club, and the Greenlining Institute on Disadvantaged Communities, February 17, 2017, p. 2.

<sup>3</sup> Manuel Pastor, et al., “Minding the Climate Gap: What’s at Stake if California’s Climate Law isn’t Done Right and Right Away,” p. 13, (2010).

<sup>4</sup> Ibid, p. 19, Figure 9.

<sup>5</sup> Ibid, p. 22, Table 4.

other stationary facilities and other emitting sectors. Indeed, if the mobile sources and the transportation sector were taken into account, electric generation impacts on fossil emissions might rank even lower.

**The Commission's current approach to electric sector planning and procurement has proven successful.** The Commission's energy planning and procurement practices over the past 10-15 years have proven very successful in reducing localized air emissions associated with electricity generation that falls under its jurisdiction.

In spite of this record, the Joint Environmental Parties comment that SB 350 mandates that the Commission (a) create a new advisory group *and* public process with residents of disadvantaged communities to inform procurement; (b) require all LSEs to prioritize procurement of renewable energy and preferred resources in disadvantaged communities; and (c) ensure that all LSEs do not site new natural gas facilities in disadvantaged communities.<sup>6</sup> Moreover, the Joint Environmental Parties propose that each step of the procurement process should be subject to an assessment of the air quality, environmental, and economic impacts on disadvantaged communities.<sup>7</sup>

As a practical matter, the Joint Environmental Parties appear to advocate for a new process in which disadvantaged communities (or advocates on their behalf) can participate apart from the existing planning/procurement processes and, hence, separate from other stakeholders. The Joint Environmental Parties' proposal raises a host of questions and concerns. First, the proposal to create a separate public process to inform the Commission on environmental justice matters seemingly would create a separate, parallel path for a segment of the public to uniquely

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<sup>6</sup> Comments of the California Environmental Justice Alliance, Sierra Club, and the Greenlining Institute on Disadvantaged Communities, February 17, 2017, pp. 5-6.

<sup>7</sup> Comments of the California Environmental Justice Alliance, Sierra Club, and the Greenlining Institute on Disadvantaged Communities, February 17, 2017, p. 33.

provide additional input to the Commission that could affect the Commission's decision-making. When a single entity or group of entities is afforded preferential treatment in the Commission's planning and procurement processes, the Commission undermines its long-standing commitment to open, transparent participation in its decision-making processes.

Second, with regard to placing a preference on preferred resources in identified disadvantaged communities, the Commission currently employs the Loading Order to ensure a preference for so-called "preferred resources." Moreover, the Commission currently relies on a least-cost/best-fit framework/methodology for determining the what, where, when of new resources that can address impacts on local communities, including disadvantaged communities. This approach has proven successful generally in meeting the diverse policy objectives imposed on the Commission, including those imposed by PU Code Section 454.52(a)(1). Redundancy in planning and procurement provides zero additional value in this regard.

Third, with regard to directing all LSEs to prioritize resources in a certain manner or to preclude the selection of certain resources, a question clearly exists as to the Commission jurisdiction over all LSEs. For example, the Commission does not have jurisdiction over POUs. Moreover, many ESPs and CCAs argue that the Commission's jurisdiction over their planning and procurement activities is not present.<sup>8</sup> Therefore, the Commission's influence in effecting lower emissions throughout the new mechanisms and processes recommended by the Joint Environmental Parties is limited.

**The Joint Environmental Parties' Proposal will impede timely and effective decision-making.** The Joint Environmental Parties would impose at *every* step of procurement

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<sup>8</sup> Comments by the Alliance for Retail Energy Markets on Disadvantaged Communities, February 17, 2017, p. 2. Post-Workshop Comments of the City of Lancaster, Silicon Valley Clean Energy Authority, Marin Clean Energy and Sonoma Clean Power Authority, February 17, 2017, pp. 2-3.

an assessment of the air quality, environmental, and economic impacts on disadvantaged communities. This assessment would occur with regard to Commission authorizations to procure new resources; Commission review/approval of LSE procurement plans; LSE bid solicitations protocols; LSE bid-evaluation; and final Commission contract approval.<sup>9</sup> This proposal enables a new assessment at each step of the procurement process. Indeed, this proposal may require a new assessment at each step of the procurement process, given the time it takes to complete the discrete steps.

First, if the proposal by the Joint Environmental Parties were adopted, all developers, including the developers of preferred resources, would be confronting a new risk not heretofore faced in California: namely, the risk that the determination of what constitutes a disadvantaged community will change during the planning, procurement, and construction due to changing demographics, income patterns, etc. IEP notes that long-range planning currently takes 2-3 years to identify the “when, where, what” of needed resources. After this phase, the competitive procurement phase can take 2-3 years to progress from a final no-longer appealable Commission decision regarding resource needs to a final, no-longer appealable Commission approval of a contract with a specific resource selected. Finally, construction of the resource can take up to 18 months. Thus, the Commission should anticipate that it typically will take 7-8 years to identify and make operational those resources deemed to be needed by the Commission. In effect, a proposed site that once fell outside the bounds of a disadvantaged community might well fall within the bounds of a disadvantaged community before the planning, procurement, and construction process is completed.

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<sup>9</sup>Comments of the California Environmental Justice Alliance, Sierra Club, and the Greenlining Institute on Disadvantaged Communities, February 17, 2017, p. 33.

Second, the proposal will have the effect of inappropriately and unnecessarily extending the Commission's oversight role *repeatedly* into areas that properly fall within the jurisdiction of other regulatory bodies, including local governing bodies, air quality management districts, etc. The Joint Environmental Parties' proposal would make all electric generators, thermal and non-thermal/renewables, subject to redundant and duplicative environmental regulation at multiple stages of the planning and procurement process.

**The Joint Environmental Parties' Proposal undermines regulatory certainty.** The Joint Environmental Parties urge the Commission to adopt a definition of disadvantaged communities consistent with AB 1550.<sup>10</sup> Moreover, the Joint Environmental Parties propose that disadvantaged communities be defined as those census tracts with median household incomes at or below 80 percent of the statewide median income. Finally, the Joint Environmental Parties recommend using the CalEnviroScreen to identify the top 25% most vulnerable communities.<sup>11</sup>

First, simple math suggests that this approach will result in defining 40 percent of all the census tracts in the state as being disadvantaged. Combined with all the land areas expected to be excluded from development, IEP urges the Commission to study the impacts of this approach prior to its adoption.

Second, the critical inputs into the CalEnviroScreen include very dynamic, constantly changing variables, including demographic and income data inputs that are inherently dynamic. The dynamic nature of the inputs makes the CalEnviroScreen outputs somewhat volatile and subject to continual change. Were the Commission to employ this methodological approach, it would be instilling into its planning and procurement framework a highly volatile factor in

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<sup>10</sup> Ibid, pp. 16-17.

<sup>11</sup> Ibid, p. 7.

decision-making. While this is not necessarily a problem with regards to investing the annual revenues from the cap-and-trade program pursuant to AB 1550, this is a significant problem long-term resource planning and development. Moreover, it is a significant risk to developers. As noted above, a proposed site that once fell outside the bounds of a disadvantaged community might well fall within the bounds of a disadvantaged community before the planning, procurement, and construction process is completed.

Third, AB 1550 concerns the allocation of revenues collected from greenhouse gas emission reduction programs, **not** the planning of future generation resource needs. It is not clear that resource planning should be dependent on definitions developed for entirely different purposes.

In summary, IEP urges the Commission to focus its attention on ensuring timely and effective decision-making; relying on processes and procedures that have proven successful; and not contorting statutory prescriptions to achieve outcomes that may have marginal impacts at best. The record shows that the Commission's current practices have been successful at lowering emissions from the electric sector. On the other hand, the Joint Environmental Parties have proposed dramatically and significantly re-vamping the Commission's current planning and procurement practices, even when the evidence suggests that the pollution benefits on local and/or disadvantaged communities are marginal at best and most likely even lower when assessed in the context of where the gross emission actually derive, i.e. the transportation sector. PU Code Section 454.52(a)(1)(H), which is the only subsection in Section 454.52(a)(1) that alludes to impacts on disadvantaged communities, does not warrant the changes proposed by the Joint Environmental Parties. The risk of undermining the investment in and the development of needed resources in a timely and cost-effective manner is significant.

IEP appreciates the opportunity to provide these reply comments. We look forward to continue working with the Commission on developing an IRP framework and coordinating long-term procurement planning requirements.

Respectfully submitted February 27, 2017 at San Francisco, California.

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