

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

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program

Rulemaking 11-05-005
(Filed May 5, 2011)

**OPENING COMMENTS OF NEXTERA ENERGY RESOURCES, LLC ON
PROPOSED DECISION CONDITIONALLY ACCEPTING 2012 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED
RESOURCE PLAN OFF-YEAR SUPPLEMENT**

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On behalf of NextEra Energy Resources, LLC

October 29, 2012

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I. INTRODUCTION

Pursuant to Article 14 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), NextEra Energy Resources, LLC (“NextEra”) submits these opening comments on the Proposed Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement that was distributed for comment on October 9, 2012 (“Proposed Decision”). The Proposed Decision conditionally accepts, with modifications, the 2012 Renewables Portfolio Standard (“RPS”) Procurement Plans filed by Pacific Gas and Electric Company, Southern California Edison Company (“SCE”), and San Diego Gas and Electric Company. The Proposed Decision also accepts SCE’s request not to hold a 2012 RPS solicitation, but prohibits SCE from considering offers for bilateral contracts during the time period covered by its 2012 RPS Procurement Plan.¹ The proposed ban on bilateral contracts would be in effect until the Commission removes it when accepting a future SCE RPS Procurement Plan.²

NextEra urges the Commission to modify the Proposed Decision to remove the restriction on SCE’s ability to consider bilateral offers and execute bilateral contracts. The concern stated in the Proposed Decision regarding lack of comparable market data is not valid, as the Commission has access to ample information regarding prices for renewable projects that could be used to evaluate the reasonableness of a bilateral contract. Instead of protecting ratepayers, a

¹ Proposed Decision, pp. 52-55.

² *Id.*, p. 55.

ban on bilateral contracts would deprive SCE ratepayers of bilateral opportunities that present significant value. This is of particular concern in the current environment, in which developers may be able to offer unique ratepayer benefits through creative transaction structures that utilize partially developed projects and advantageous tax benefits that are set to expire. Given the potential upside to consumers from allowing bilateral contracts, and the fact that the Commission has ultimate authority to decide whether to approve an executed contract, there is no reason to prohibit the utility from considering bilateral offers. These points are discussed below.

II. THE COMMISSION SHOULD MODIFY THE PROPOSED DECISION TO ALLOW SCE TO CONSIDER BILATERAL OFFERS AND ENTER INTO BILATERAL CONTRACTS

The primary concern expressed in the Proposed Decision regarding bilateral contracts is that “without a solicitation, the Commission will not be able to adequately determine the reasonableness of bilateral contracts as no comparable market data for SCE will exist for the Commission to compare with the bilateral contract (assuming that the facility is greater than 20 MW in size).”³ The Proposed Decision also notes that “the Commission has a preference for contracts from solicitations.”⁴

The Proposed Decision errs by prohibiting SCE from considering bilateral offers. The concern regarding lack of comparable market data is not valid and does not support the proposed prohibition. The Commission has access to ample information regarding prices for renewable projects that could be used as comparison points for evaluating the reasonableness of a project offered through a bilateral negotiation. New bilateral contract pricing could be compared with prices for winning projects in recent SCE solicitations, and with prices for winning projects in the 2012 solicitations conducted by the other two utilities. The solicitations arising from the Renewable Auction Mechanism (“RAM”), while relating to smaller projects, produce current price benchmarks to evaluate the active solar photovoltaic market. Given the vast number of RPS procurement contracts that have been reviewed and approved (or in some cases, rejected) in recent years, the Commission and the Energy Division have extensive experience and data regarding pricing trends. There is plenty of data that could be used to determine whether a

³ *Id.*
⁴ *Id.*

bilateral contract offers sufficient ratepayer benefits to warrant approval outside the competitive solicitation process.

Instead of protecting ratepayers, a ban on bilateral contracts would deprive SCE ratepayers of contracting opportunities that offer compelling value. While the Proposed Decision correctly notes the preference for contracts from solicitations, it overlooks the important benefits of allowing SCE to consider bilateral offers. The flexibility to engage in bilateral negotiations is a useful procurement tool that allows SCE to take advantage of attractive, non-standard (and sometimes unique) opportunities that arise outside of the regular solicitation process. These opportunities would be lost during the period covered by SCE's 2012 RPS Procurement Plan if SCE were prohibited from even considering bilateral offers as recommended in the Proposed Decision.

This is a particular concern in the current market and regulatory environment. As the Commission is well aware, there has been considerable renewable development activity in California, and not all projects have made it across the finish line. Some projects have stalled in the development process due to technology concerns or financial duress, sometimes leading to termination of a Commission-approved power purchase agreement. There may be opportunities to substitute more viable and less costly technologies that could make a failed project viable again, while taking advantage of existing assets and progress already made in the permitting and interconnection processes. Developers are likely crafting creative ways to structure procurement contracts to utilize advantageous federal tax credits and California property tax credits that are set to expire in 2016, and offer attractive pricing and a deferred procurement start date that aligns with SCE's need in the second and third RPS compliance periods.⁵

Some of these offers will have a relatively short window of opportunity to obtain the contract approval needed to secure financing and complete construction to realize the ratepayer benefits. For large projects (those that are 250 MW or larger), the construction period can exceed two years. To attain maximum value for ratepayers, these opportunities must have final contracting visibility well before the end of 2014. If a solicitation is deferred to the next RPS cycle, and bilateral contracts are prohibited, the ability of the developer to properly develop and

⁵ See, e.g., PG&E Advice Letter 4107-E (Sept. 10, 2012).

complete the project in a timely manner is not only compromised, but is likely precluded as a practical matter. Moreover, for many of these potential transactions, SCE is the buyer capable of best optimizing the projects' value to ratepayers (such as capacity value that avoids potential constraints on Path 26).

If a counterparty is able to utilize these factors to develop a unique transaction structure that provides significant ratepayer value, the Commission should allow (and encourage) SCE to consider it. The Commission will have the ability to review the final package and evaluate it against all available benchmarks to decide whether it is sufficiently advantageous to warrant approval outside the solicitation process, or whether there is not enough data to support approval. Given the potential upside to SCE ratepayers, and the fact that the Commission has ultimate approval authority, there is no reason to prohibit SCE from entertaining a bilateral offer.

The Commission has previously recognized that allowing utilities to consider bilateral offers is beneficial for ratepayers. In Decision 11-04-008, the Commission lifted a prohibition on bilateral contracting that previously was imposed in Decision 10-12-048 for projects that would be eligible to participate in the RAM solicitations. In granting two separate petitions for modification of Decision 10-12-048 filed by NextEra and the Independent Energy Producers Association, the Commission concluded that the prohibition on bilateral contracts "could increase ratepayer costs by eliminating attractive contracts that for various reasons cannot participate in RAM."⁶ That risk is amplified in this case because eliminating bilateral contracting means that there will be zero opportunities for SCE to execute "attractive contracts" for large renewable projects due to the decision not to hold a 2012 RPS solicitation.

In Decision 11-04-008, the Commission also recognized that a prohibition on bilateral contracts for RAM-eligible projects could have benefits because it might "drive more participants into a RAM solicitation than would otherwise participate, thus increasing price competition."⁷ Ultimately, however, the Commission weighed the pros and cons of the prohibition on bilateral contracting and decided to eliminate the ban entirely, explaining:

⁶ Decision 11-04-008, pp. 6-7.

⁷ *Id.*, p. 7.

[I]t is impossible to know the net impact of the prohibition on potential benefits or costs absent more extensive knowledge of potential market participants and their motivations. Therefore, on balance we are persuaded that the prohibition on bilateral contracting is overly broad and appears likely to work to the detriment rather than to the advantage of ratepayers. While narrowly tailored solutions may help in specific instances, petitioners have presented a compelling case that eliminating the prohibition on bilateral contracting altogether makes the most sense given the breadth of potential unintended consequences and potentially forgone contracting opportunities, including amendments or extensions of existing contracts, and opportunities to support demonstration projects involving experimental or emerging technologies.⁸

The Commission should apply the same balancing test and conclusion to remove the prohibition on bilateral contracts from the Proposed Decision. The potential ratepayer benefits that could arise from a unique bilateral opportunity will outweigh any extra burden that may be associated with evaluating the reasonableness of the contract outside of a solicitation process. Stated another way, the prohibition on bilateral contracts operates only to impose the risk that ratepayer benefits will be missed. There is no real offsetting threat that allowing SCE to seek approval of a bilateral contract will somehow diminish or inhibit the Commission's ability to exercise its authority to review the reasonableness of that contract using current and abundant market data. Just as in the case of the RAM auction, eliminating the proposed ban on bilateral contracting makes the most sense given the contracting opportunities that would be foregone if the prohibition were adopted.

III. CONCLUSION

NextEra appreciates the opportunity to submit these opening comments. NextEra's recommended changes to the Proposed Decision's Conclusions of Law and Ordering Paragraphs are provided in the attached Appendix.

⁸ *Id.*

Respectfully submitted,

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On behalf of NextEra Energy Resources, LLC

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APPENDIX
PROPOSED CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

Delete Conclusion of Law 19 in the Proposed Decision, which states:

19. SCE's proposal that it will consider offers for bilateral contracts during the time period covered by the 2012 RPS Procurement Plans is not reasonable because price reasonableness of such contracts is evaluated by comparison to the annual solicitation, which SCE will not hold.

Add a new Conclusion of Law 19 that states:

19. SCE's proposal that it will consider offers for bilateral contracts during the time period covered by the 2012 RPS Procurement Plans is reasonable because it will afford flexibility to take advantage of unique transactions that offer significant ratepayer benefit, and because ample market data exists to evaluate the price reasonableness of such contracts.

Delete Ordering Paragraph 16 in the Proposed Decision, which states:

16. In the final 2012 Renewables Portfolio Standard Procurement Plan to be filed with the Commission pursuant to the schedule adopted herein, Southern California Edison Company shall remove the consideration of bilateral offers.

Add a new Ordering Paragraph 16 that states:

16. In the final 2012 Renewables Portfolio Standard Procurement Plan to be filed with the Commission pursuant to the schedule adopted herein, Southern California Edison Company is permitted to consider bilateral offers, but must demonstrate that any executed bilateral contracts offer significant ratepayer benefits.

VERIFICATION

I, Kerry Hattevik, am the Director of West Market Affairs of NextEra Energy Resources, LLC. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the October 29, 2012 Opening Comments of NextEra Energy Resources, LLC on Proposed Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated as of October 29, 2012.

/s/ Kerry Hattevik

Kerry Hattevik
Director of West Market Affairs
NextEra Energy Resources, LLC