

**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 on May 5, 2011)

**OPENING COMMENTS OF THE COALITION OF CALIFORNIA UTILITY
EMPLOYEES ON THE SECOND ASSIGNED COMMISSIONER'S RULING
ISSUING PROCUREMENT REFORM PROPOSALS**

November 20, 2012

Marc D. Joseph
Jamie L. Mauldin
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Telephone
(650) 589-5062 Facsimile
jmauldin@adamsbroadwell.com

Attorneys for the Coalition of
California Utility Employees

**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 THE
COALITION OF CALIFORNIA UTILITY EMPLOYEES
ON THE SECOND ASSIGNED COMMISSIONER'S RULING ISSUING
PROCUREMENT REFORM PROPOSALS**

Pursuant to the October 5, 2012, Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals (October ACR), the Coalition of California Utility Employees (CUE) offers these opening comments. Comments are numbered to correspond with the October ACR's questions where applicable.

I. INTRODUCTION

The Assigned Commissioner's October ACR is a thoughtful, organized, and generally commendable proposal which offers several streamlining changes to the RPS procurement process. However, some of the proposals in the October ACR would be counter-productive or would have unintended consequences. The October ACR recognizes that the renewable energy market has shifted dramatically. The ACR's proposals, however, implicitly assume that a current snapshot of that market is an accurate predictor of the future. But just as PV surprisingly became the technology *du jour* in the past two or three years, the next few years will likely reveal unforeseen additional dramatic changes. Thus, we should not become wed to

a process which filters out judgment and ensures that only the cheapest and least innovative technologies of today will be procured.

Additionally, section 399.13(a)(4)(iv) enacted as part of SBx2 requires the Commission to modify the least-cost best-fit ranking process to now consider employment benefits when calculating the net cost of a project.

II. COMMENTS

1. **Decreasing the level of review of contracts will encourage approving “too good to be true” offers.**

The October ACR proposes to increase the level of review of IOUs’ shortlists in the procurement process in order to streamline the subsequent advice letter review by the Commission. The IOUs would submit their shortlists via a Tier 3 Advice Letter and then if the subsequent contract characteristics and value does not differ meaningfully from the project as bid, the contract will be approved. While creating a more in-depth review process for shortlists may be beneficial, lessening the review on the resulting contract might encourage approving those projects that seem “too good to be true.” Only after the final negotiations between the utility and the developer are completed will the IOU have a more sophisticated understanding of the proposed project, its virtues and flaws, and its likelihood of success. The October ACR proposal would approve those contracts which are materially like the project as bid, without taking a high level review of the actual attributes of a project. Therefore, the contracts should receive the same level of review as they do now in order to prevent approving unworthy projects.

3-4. Expedited review for some contracts longer than 5 years discourages developing other innovative projects.

The October ACR proposal allows for contracts less than five years in term length to be submitted with a Tier 1 Advice Letter for expedited review. Similarly, contracts with five or more years in term length can be submitted with a Tier 2 Advice Letter for expedited review. Currently, both types of contracts require Tier 3 Advice Letters.

CUE supports expedited review for contracts less than 5 years in term length. These are generally short term gap-fillers with little or no policy impact.

As for longer-term contracts, the proposal would streamline the review of RPS contracts “that use commercially proven technologies.”¹ So, if a newer developing technology is sought in the contract review process, this proposal combined with the proposal in Section 4.4, will effectively incent utilities and developers to race to the bottom. Those projects that are different, new, innovative and unproven will have to go through the application process, which can take a year or more for approval. Therefore, this focus on streamlining proven technologies will squeeze out development opportunities for advances in technology or changes in the market. Utilities would be strongly discouraged from procuring anything that does not qualify for the expedited approval.

¹ October ACR, p. 12.

**Section 4.4 The proposed Standard of Review severely limits
Commission scrutiny and creates a race to the bottom.**

The proposed RPS Standard of Review (SOR) process is impressively well-organized and ambitious. However, requiring contracts that do not meet the proposed SOR standards and contracts for generation from a non-commercially proven technology to go through the application process, while other contracts are expedited, will create a bias against emerging technologies. As mentioned above, the application process can take a year or more before approval or denial. If contracts for generation with proven technologies are guaranteed an expedited approval, assuming all SOR requirements are met, then why would a developer or utility attempt to contract for newer, more advanced, and more efficient projects? The result of this SOR proposal will give us too much of today's cookie-cutter generation. Contract approval will no longer require Commission scrutiny because as long as the boxes are checked, the contract should meet the approval standards. However, if the playing field is leveled then more projects with diverse attributes are competing for approval. Superior technologies will emerge. The Commission can then evaluate the merits of the projects for the benefit of the ratepayers, the environment, and the future of California, and approve those that provide the most benefits.

Moreover, the proposal claims to focus on the dynamic and fast-changing current renewables market. If the market is so dynamic, why do we want to fast track technologies that will likely be out of date in a few years? Moreover, the proposal fails to incent developing new technologies. Forcing projects using new

technologies through the time-consuming application process while projects using existing technologies are expedited, however, will bias utilities and developers against proposing them. Ultimately, the proposal will have a chilling effect on developing new technologies. By creating an almost guaranteed certainty of approving commercially-proven technologies, projects that might use emerging technologies will be disfavored by utilities and those parties seeking to develop new generation.

19. Unbundled REC contracts should be compared to broker quotes.

The ACR proposal seeks other cohorts to which unbundled REC contracts should be compared in addition to (1) shortlisted unbundled REC bids from the most recent annual RPS solicitation and (2) all unbundled REC contracts that were executed in the 12 months prior to contract execution. Due to the success of SBx2, REC values have dropped dramatically. Therefore, in addition to the listed cohorts in the proposal, unbundled REC contracts should be compared to broker quotes for the most recent market price for RECs so as to reflect the most recent, very low value of unbundled RECs.

24-26. Implementing Section 399.13(a)(4)(iv) will reduce projects' net costs.

The Legislature has required the Commission to consider “workforce recruitment, training, and retention efforts, including the employment growth associated with the construction and operation of eligible renewable energy resources and goals for recruitment and training of women, minorities, and disabled

veterans” when establishing the least-cost and best-fit eligible criteria. In implementing section 399.13(a)(4)(iv), the Commission must require utilities to analyze how workforce benefits accrue from these projects. In other words, the utility should analyze the economic benefits to ratepayers resulting from the employment growth fostered by a project, and include that analysis in the LCBF calculation of the cost of a project. This should not be difficult.

The gross ratepayer cost of a project, as reflected in the PPA, will be offset by the money that goes back to ratepayers in the form of “employment growth associated with the construction and operation of eligible renewable energy resources.” For example, assume a project costs ratepayers \$1 billion NPV over the life of the PPA. Then assume that the same project produces \$200 million in construction and operation payroll. Then the net cost of the project is \$800 million, but only if those projects are located in IOU territory. If a project is sited outside of IOU territory, the \$200 million in jobs would go to workers there, and not the ratepayer community supporting the RPS program. Under that scenario, the net cost of the project is still \$1 billion.²

In considering the employment growth and other workforce benefits criteria to be used in rank ordering and selecting of LCBF renewable energy projects, Section 399.13(a)(4)(iv) now requires the Commission to require utilities to look at the net cost of the project, after subtracting the employment growth benefits.

² The IOU and Commission could also produce a more accurate net cost by looking at the secondary impacts of the construction and operation spending, including the multiplier effect. This would better distinguish between a project where the bulk of the material and equipment cost goes to distant suppliers from a project where more materials and equipment is purchased locally.

III. CONCLUSION

While the October ACR presents many commendable proposals for streamlining the PRS procurement process, some of the proposals will create unintended consequences. Focusing more review on the approval of shortlists over a projects' contract will not catch those "too good to be true" offers. Additionally, expedited review for only commercially proven technologies will ultimately cause a chilling effect on developing new technologies. Our current renewables market is dynamic and constantly changing. The Commission should seek to foster innovation to meet our changing needs and not create a status quo based on today's cheapest and most advanced technologies.

The Commission is also required to establish the rules for utilities to make procurement selections based on the net cost of a project, after considering the employment benefits of a project.

November 20, 2012

Respectfully submitted,

/s/

Marc D. Joseph
Jamie L. Mauldin
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
Telephone: (650) 589-1660
Facsimile: (650) 589-5062
mdjoseph@adamsbroadwell.com
jmauldin@adamsbroadwell.com

Attorneys for the Coalition of
California Utility Employees