

**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 LARGE-SCALE SOLAR
ASSOCIATION ON THE SECOND ASSIGNED COMMISSIONER'S
RULING ISSUING PROCUREMENT REFORM PROPOSALS AND
ESTABLISHING A SCHEDULE FOR COMMENTS ON PROPOSALS**

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Pursuant to the October 5th Ruling of Assigned Commissioner Ferron issuing procurement reform proposals and establishing a schedule for comments on proposals (["ACR"]) and the due date extension for comments granted by ALJ Simon on November 5th, the Large-scale Solar Association (["LSA"]) respectfully submits these opening comments on issues to be considered as the California Public Utilities Commission (["Commission"]) moves forward with its consideration of Renewables Portfolio Standard (["RPS"]) Procurement Reform.

Introduction

LSA appreciates the opportunity to provide comments on the procurement reform proposals and applauds the Commission for taking steps to increase the efficiency, transparency and certainty in the procurement process. LSA supports the overall goals of the reform, however, we recommend that the Commission identify specific objectives for each section and develop more detailed standards of review that are aligned with the

development process. LSA also understands the Commission’s interest in completing this reform quickly, but urges the Commission not to let expedience take precedence over substance and effectiveness. Given this, LSA’s comments on the ACR focus on the areas where we think the proposed reform needs the most clarification and changes.

LSA understands that one of the main goals for this reform is to increase the efficiency of the process. LSA supports timely and transparent review of projects, which is essential to a functioning procurement process. While the ACR emphasizes identifying standards of review (“SOR”) and timelines for submission of executed contracts (which we address in detail below), it lacks a corresponding commitment from the Commission to review shortlists or contracts in specified timeframes. While the ACR’s emphasis on economic, viable projects using commercial technology may streamline review and approval, the Commission should commit to a set timeline for review in order to assure the benefit of the proposals are realized. Below in LSA’s answers to the questions posed in the ACR, you will find recommended timeframes for the Commission to consider (in addition to its mandated timeframes under General Order (“GO”) 96-B).

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1. Shortlist Review

Question 1. Provide comments on the strengths and weaknesses of increasing the level of review of IOUs' shortlists. If an alternative review process or review standards are proposed, include justification for the proposal.

LSA generally supports the approach of increasing the level of review of the shortlist if it will achieve the intended results of streamlining contract approval.

However, we have several concerns about how this process will work. As noted above, it is unclear how long it will take the Commission to approve the shortlist. This presents a problem given the proposal for and recent approval of a 12-month time frame for parties to execute contracts on the shortlist (beginning at the date of shortlist submittal).¹ Parties will need to immediately begin negotiations and expend significant resources in order to meet the 12-month timeframe but may not know for many months if their project will ultimately be on the Commission approved shortlist. LSA doubts that parties will enter serious negotiations until the Commission approves a shortlist. Below is an example of how this might play out in the timelines under the recently approved 2012 (now 2013)

Procurement Plans:

- a. Mid-December 2012 RFO
- b. 84 days for bidding to close
- c. 70 days from utility notification of bid closing for shortlist submittal (approx mid-May 2013)
- d. Submittal of the shortlist to the CPUC (Summer 2013)
- e. Contract negotiations either in parallel or subsequent to CPUC approval (with the possibility that shortlist may expire prior to approval by the Commission)
- f. Contract submittal to CPUC currently within 60 days of execution (under the ACR 30 days)
- g. 30 days for CPUC approval if contract qualifies for expedited process
- h. Unknown timeframe for CPUC approval if a Tier 3 Advice Letter is required (assuming a contract is executed by Summer 2014 this could mean final approval anywhere between late 2014 to early 2015) or if

¹ D.12-11-016, Decision Conditionally Accepting 2012 Renewable Portfolio Procurement Plans and Integrated Resource Plan Off-Year Supplement (November 14, 2012) p. 33-34.

not expedited approval, assuming 1 year for CPUC approval (contract approval late 2015).

Practically, a project developer that bids expecting to capture the expiring federal Investment Tax Credit and the California solar property tax exemption has to have approved contracts by early 2014 in order to have sufficient construction time to be online by the end of 2016. Expediting shortlist submittal and a CPUC commitment to an approval timeline will increase the likelihood the proposal will result in added efficiency. In order to address this issue, LSA recommends that the Commission require that shortlists be submitted to the Commission within 30 days of bid closure as opposed to the 70 days provided for in D. 12-11-016. LSA also recommends the Commission adopt a 90 day review period for shortlist approval. This will increase the efficiency of the process and certainty for the market, regulator and ratepayers and help ensure that resources are only expended on negotiating contracts on the approved shortlist.

2. 12-month Shortlist Expiration

Question 2. Discuss the strengths and weaknesses of the proposal to set a time requirement for requesting Commission approval of an RPS contract. What impact will it have on the market, ratepayer, and regulator? If an alternative time requirement is proposed, include a justification for the proposal.

As we noted in our Comments on the 2012 RPS Procurement Plans, LSA has concerns about the 12-month time frame for contract execution.² As indicated above, LSA supports a more efficient process, and we believe that a 12-month shortlist expiration holds promise in moving the procurement process forward more efficiently. However, we remain concerned about the lack of flexibility in the proposal to address

² Opening Comments of LSA on the Proposed Decision of ALJ DeAngelis Conditionally Accepting 2012 RPS Procurement Plans and IRP Off-Year Supplement (Nov. 5, 2012), p. 4.

unforeseen circumstances, outside of the parties' control. This concern is compounded by the fact that developers cannot rely on the IOUs holding regular solicitations which creates market and regulatory uncertainty, making it difficult to sustain a robust renewable industry. The 12-month shortlist expiration may overly restrict the market, resulting in fewer options available to both IOUs and the ratepayers. Moreover, this requirement does not provide assurance to the ratepayer of the market relevance of a price when the Commission approval process is so lengthy that regulatory delays can impact market relevance as much or more than contracting delays.

3. Expedited Contract Approval Process

Question 3. The above proposal defines expedited review prerequisites differently for contracts <5 years and those ≥5 years in term length. Comment on the appropriateness of the 5 year term length distinction. If an alternative is proposed, include a justification for the proposal.

LSA recommends that the Commission relax the requirement that contracts with terms shorter than five years must be operational within one year of contract execution. The proposed SOR create an unnecessary market restriction for projects that are currently on-line and have future contract expirations by requiring existing resources to wait until they have almost reached contract expiration to renegotiate their contracts. LSA believes this is an unnecessary restriction that creates more risk for both suppliers and IOUs and recommends that the SOR be eliminated. Instead, contract start dates should be a negotiated term of each transaction.

Question 7. The above proposal extends the expedited approval process to contracts greater than five years in term length. Because long-term contracts are primarily for generation from facilities that are not yet operating, viability screens are proposed as prerequisites to reduce RPS portfolio risk for the IOUs and ratepayers. Comment on the strengths and weaknesses of the proposed viability screens.

LSA supports the creation of an expedited approval process for long-term contracts but is concerned that the proposed reform fails to adequately account for the complexity of the process or actual development timelines. At the outset, LSA urges the Commission to clarify the specific objectives for the creation of the expedited process. Other than projects that use commercially proven technologies, what kinds of contracts does the Commission want to review under the expedited process? Does the Commission want this process to be available for projects with on-line dates in later compliance periods? How many contracts does the Commission anticipate will be able to utilize this process? Only after the objectives are clarified can the SOR be properly vetted. To give one example, the SOR in Table 1 include several transmission related requirements that do not reflect CAISO's new GIDAP transmission process, which changes the way projects in Cluster 5 and beyond will be studied.³ This is important, as the change to the CAISO Study process should be reflected in the SOR and in how transmission viability is assessed in the Project Viability Calculator. This also raises the question as to whether the viability screens in Table 1 are the correct and most useful benchmarks for a functioning expedited process. LSA does not believe that these issues can be properly vetted in written comments and requests the Commission re-examine the Project Viability Calculator and the proposed reforms through workshops in order to allow for greater conversation and proper vetting of the specific SOR.

In addition to the questions above, LSA has specific questions concerning two of the proposed viability screens in Table 1, which further highlight the need for clarifying

³ See Conformed Fifth Replacement California ISO Tariff (Nov. 5, 2012) & GIDAP Customer Guidelines (7/27/2012) available at: <http://www.caiso.com/planning/Pages/GeneratorInterconnection/Default.aspx> (last accessed November 20, 2012).

the objectives of the proposed reform. First, LSA requests the Commission to clarify whether standard contracts from RPS solicitations would be eligible for expedited review. Table 1 indicates that contracts are eligible only if they have a pro forma contract without modification. The Commission should recognize that there can be minor, non-material modifications to the pro forma contract so long as such modifications are not material and utility ratepayers and the Commission would be indifferent to such changes. Requiring use of the pro forma without modification is unnecessarily restrictive and may result in a number of projects being ineligible for the expedited process due to non-material changes to the pro forma forcing those contracts into the Tier 3 review. It should also be noted that the pro forma contract is generally designed for new generation projects and many of the provisions are inapplicable to existing generation projects. LSA urges the Commission to clarify this section, particularly since the proposal to have an upfront look at these projects via the shortlist should result in cost effective and viable contracts advancing through the approval process. From this perspective, a rigid approach that does not allow any change, even a non-material one, to the pro forma could result in little payoff from the upfront Tier 3 review because projects would be unnecessarily restricted from the expedited review process. LSA also requests the Commission review expedited contracts within the 30-day timeframe required for Tier 2 Advice Letters by GO 96-B.

Second, LSA requests the Commission to clarify what it intends in the viability screens requiring that a project have filed all necessary permits. Some permits, like building permits, are applied for late in the development process. Would a project have to have applied for this permit to qualify for expedited review? If so, few if any projects

could meet this criterion. Also, how would this apply to permits that may be necessary later, such as an Incidental Take Permit for endangered species?

4. SOR for Contracts from RPS Solicitations

Question 8. The above proposal requires contracts to be consistent with an IOU's net short approved in the most recent Procurement Plan. Propose how this criterion could be applied to an individual contract.

LSA supports the concept put forward in the ACR that projects be consistent with an IOU's Renewable Net Short (RNS) as approved in the most recent Procurement Plan. However, we think that this standard is most useful for the Commission to review and apply it during its shortlist review process and is therefore an unnecessary benchmark for contracts that have undergone the Solicitation process. The Commission already has mechanisms in place to both approve the RNS and to penalize over-procurement. The addition of this SOR to the approval process for individual contracts is unnecessary. To that end, LSA encourages the Commission to allow the IOUs sufficient flexibility in meeting their stated needs by removing this criterion from both Table 1 and Table 2. However, should this SOR be adopted as a metric for individual contracts, LSA is concerned about how it will be applied. For example, if a contract is several MW above an IOU's stated need in the approved RNS but that need has shifted since the approval of the RNS, will the Commission reject the contract? In addition, LSA recommends that as IOUs will be required to update their RNS prior to submittal for contract for approval, the Commission should consider the updated information as part of its criteria.

In addition, LSA recommends that, because the Commission will have reviewed the shortlist under a heightened Tier 3 process, it should adopt a 120-day timeframe for review of contracts eligible for Tier 3 review under the SOR in Table 2.

5. SOR for Bilateral Contracts

As in the expedited process, LSA requests that the Commission further specify its objectives for bilateral contracting. LSA supports a robust solicitation process and a procurement process that allows for bilateral contracting. As the ACR notes, bilateral contracts have been an accepted procurement option for IOUs since the inception of the RPS program.⁴ This includes Commission support for bilateral opportunities beginning in its 2003, in D. 03-07-071 and continuing through setting specific requirements for evaluating bilateral contracts in 2009 in D. 09-06-050. In order to evaluate the SOR proposed in Table 3, LSA requests the Commission more specifically identify the problems it is trying to solve, why the current procurement rules are not adequate to address these problems and how each of the proposed SOR address these needs.

Question 11. Are the proposed cohorts to be used to evaluate the reasonableness of a contract's price, net market value, and viability appropriate? If not, provide an alternative proposal and justification for the alternatives.

LSA recommends that in addition to the cohorts above, bilateral contracts be compared to any recent solicitation that includes renewables in order to fairly compare pricing levels (e.g. RAM). This would give the Commission more data points to compare price when evaluating price reasonableness of bilateral contracts and would ensure that ratepayers are gaining the benefit from the comparison analysis.

6. SOR for Amended Contracts

As recommended above for the SOR for expedited and bilateral contracts, LSA requests the Commission specify its objectives and the problems it would like to address in the SOR for amended contracts. As noted above, it is difficult to evaluate whether a

⁴ Second ACR Issuing Procurement Reform Proposals at p. 21.

SOR is prudent, without first understanding the specific problem it intends to address.

LSA also requests the Commission clarify what constitutes a "technology change" for amended contracts eligible under Table 4. The ACR is unclear in this respect. It states:

*"Notably, any contract amendments or amended and restated contracts that change the project's technology (e.g., solar photovoltaic vs. solar thermal) must be re-bid into the next RPS solicitation. This also includes major modifications to existing technology that potentially change the economics of the project, such as the incorporation of storage."*⁵

This section does not define what will constitute a change in technology or a major modification, nor does it set standards for the Commission to use in evaluating whether a change constitutes a major modification. For instance, would c-Si to thin film, fixed tilt to tracker, PV to CPV, etc. constitute technology changes? In addition, how does the Commission propose to evaluate whether there has been a "change to the economics of a project."⁶ Without further information, LSA has no opinion at this time as to the reasonableness of these criteria.

7. Standards of Review for Non-Standard RPS Power Purchase Agreements

LSA has two concerns with the proposed SOR for Non-Standard Power Purchase Agreements. First, LSA is concerned that requiring commercially unproven technologies to go through the application process will be a tremendous deterrent to getting contracts signed for new and improved technologies. The application process is difficult and lengthy and the proposed reform would create a higher bar for the projects that regulators and ratepayers should be encouraging in order to support the growth and development of the industry and more efficient and innovative technologies. In addition, LSA is concerned that the impact on the market will be to create a market disincentive to

⁵ Id at p. 25-26.

⁶ Id.

improving technology. The Commission should structure the procurement process to incentivize improvements and should review those projects under the SOR in Table 3.

Second, LSA recommends that contract prices for non-standard projects not be disclosed as part of the public record. Requiring price disclosure only for non-standard contracts is discriminatory. LSA believes that the consequence of this SOR will be that IOUs will choose not to pursue larger contracts and/or contracts with new and improved technology. This could very well result in foregoing potentially lower-cost, higher-efficiency projects, which would be detrimental both to the market and the ratepayers.

Conclusion

LSA appreciates the opportunity to comment on the proposed procurement reform proposals and applauds the Commission for taking the first step in reforming the procurement process in order to improve the transparency, efficiency and certainty of the process. We urge the Commission to now go deeper and clarify the objectives and examine the rationale for the proposed changes, as doing so is essential to creating a functional process that meets our shared goals.

Dated: November 20, 2012

Respectfully Submitted,

/s/ Rachel Gold

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VERIFICATION

I, Rachel Gold, am the Policy Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare that the statements in the foregoing copy of *Opening Comments of the Large-scale Solar Association on the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals* 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.

Executed on November 20, 2012 at Berkeley, California.

/s/ Rachel Gold

Rachel Gold
Policy Director, Large-scale Solar
Association