

**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 10, 2011)

**COMMENTS OF EDF RENEWABLE ENERGY, INC.
ON PROCUREMENT REFORM PROPOSALS**

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EDF Renewable Energy, Inc. (“EDF Renewable Energy”), formerly enXco, respectfully submits these comments in response to the *Second Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals* dated October 5, 2012 (“ACR”).

I. INTRODUCTION

As a renewable developer with more than 25 years of industry experience in California, including the development of over 1,380 MW of wind and solar projects, EDF Renewable Energy strongly agrees with Commissioner Ferron that refinements to both the Renewables Portfolio Standard (“RPS”) procurement process and the Commission’s RPS contract review process are needed to “support market certainty” and better align current practices “with the realities of today’s renewable energy market.” We emphasize the importance of this effort in light of continued volatility in the availability of federal incentives for renewable energy, with the current uncertainty over the extension of the federal production tax credit for wind generation serving as the current example. Persistent federal incentive uncertainty requires the Commission

to recognize that securing certain federal incentives has become a “fleeting” opportunity for the state that requires refinements in the contract review process.

With the aim of maximizing the potential for realization of these laudable goals, EDF Renewable Energy recommends two further process refinements: (1) proposed contracts containing terms that deviate from the submitting IOU’s pro forma contract should be eligible for expedited review, provided that the modified terms do not materially affect the ratepayer protections afforded under pro forma contracts; and (2) the Commission should establish target dates for staff to complete the review of proposed RPS contracts, noting that the very capable and industrious Energy Division staff faces persistent resource constraints that the state of California is remiss in not addressing as soon as possible to the detriment of the Commission and its staff, utilities, developers, and ratepayers. Lastly, EDF Renewable Energy recommends that the Commission direct the IOUs to include a summary table in each advice letter filing or application to facilitate review by staff and interested parties.

In the following comments, EDF Renewable Energy describes these proposed process refinements in more detail, explains why they are needed, and illustrates how they would operate.

II. COMMENTS

A. RPS Contracts With Negotiated Terms That Do Not Materially Increase Ratepayer Risks Should Be Eligible for Expedited Review.

Among the proposals to streamline that Commission’s RPS contract review process, the ACR proposes to revise and expand the expedited review process established in Decision (D.)

09-06-050 for short-term RPS contracts.¹ As noted in the ACR, the Commission currently requires the IOUs to submit contracts resulting from RPS solicitations via Tier 3 advice letters.² As proposed in the October ACR, the expedited review process would be expanded to include both short- and long-term contracts, subject to certain prerequisites. Going forward, the IOUs would be allowed to submit short-term RPS contracts that meet the prerequisites for Commission review via Tier 1 advice letters, and would be allowed to submit long-term RPS contracts that meet the prerequisites via Tier 2 advice letters.

One of the biggest stumbling blocks to the development of new renewable generation projects to serve the California market is the sometime very long delay between the submittal of a proposed contract and the Commission's approval of the contract. EDF Renewable Energy therefore supports the ACR's proposal to expand the expedited review process to include long-term RPS contracts. EDF Renewable Energy is concerned, however, that the requirement for proposed contracts to not deviate from the IOU's pro forma contract is overly restrictive and could unnecessarily delay the approval of otherwise beneficial contracts.

EDF Renewable Energy understands and appreciates the rationale behind the "without modifications" prerequisite for expedited review—i.e., to ensure that any contracts with negotiated terms which could place ratepayers at greater risk are subject to closer scrutiny. There could very well be instances, however, where the modified terms of a negotiated contract do not in fact increase ratepayer risk. In such instances, where it can be affirmatively shown that the modified terms are innocuous from a ratepayer risk perspective, it would be unfortunate

¹ The ACR utilizes the existing convention of referring to contracts with terms of less than 5 years in duration as "short-term" contracts, and those with terms of five years or longer in duration as "long-term" contracts. These comments adopt the same convention.

² ACR at 12.

should the unavailability of expedited review unnecessarily increase the risk of an otherwise viable project not being developed. EDF Renewable Energy is also concerned about unintended consequences, such as the IOUs potentially using the “without modifications” prerequisite to pressure developers to forego attempts to negotiate contract modifications that would enhance the project’s viability without increasing ratepayer risk.

EDF Renewable Energy therefore urges the Commission to consider modifying the “without modifications” prerequisite such that contracts containing modified terms could be eligible for expedited review, provided that the submitting IOU can demonstrate that the modified terms would not place ratepayers at greater risk compared to an unmodified pro forma contract. EDF Renewable Energy specifically proposes that the wording of the “Contract Term” prerequisite set forth in the ACR in Table 1 be modified as follows:

Pro forma contract without material modifications per Commission-approved Bid Solicitation Protocol. [fn]

In order to delineate what constitutes a “material” modification, EDF Renewable Energy further proposes that the following footnote be added to the above text:

For purposes of this prerequisite, “material” is defined as any alteration to the terms of the pro forma contract that would materially increase ratepayer risk as compared to the corresponding terms of the pro forma contract.

In addition, the Commission’s implementing order should specify that the advice letter by which the utility submits a modified contract for expedited review should include a table that: (1) clearly identifies which term(s) of the pro forma contract have been modified; (2) provides a brief description of the modification; and (3) provides a brief explanation of why the modified term will not increase ratepayer risks. To the extent the utility deems necessary, further explanation of the modified terms should be set forth in the text of the advice letter.

With these safeguards in place, EDF Renewable Energy believes that the Contract Terms prerequisite for expedited review can be relaxed slightly to allow for contracts that contain commercially desirable negotiated terms without exposing ratepayers to any additional risk.

B. The Commission Should Set Target Dates for the Completion of the Review of Proposed Contracts.

EDF Renewable Energy would be remiss if it failed to respectfully point out that part of the difficulty in moving forward with the development of new projects stems from uncertainty about how long it will take for a contracting utility to secure the Commission's approval of a proposed contract, not because of delays on the part of the developer or the contracting utility, but because of wide variation in the amount of time various proposed contracts have sat with the Commission in the past. EDF Renewable Energy understands that, at least in some cases, unexpected delays in the Commission's processing of IOU advice letter filings requesting approval of proposed RPS contracts have been the product of unusual or unique circumstances surrounding the proposed contracts. More often we ascertain that delays are often the result of understaffing at the Energy Division, as existing staff work hard and expertly to process a high volume of proposed contracts without attendant increases in staff resources to handle the increased volume. The result of such unintended delays is the sudden manifestation of unforeseen delays in the commencement of projects, since developers cannot move forward with hundreds of millions of dollar of investment without assurance that the utility customer will be able to rate base the associated contract. The significance of such construction delays is greatly magnified by hard deadlines associated with securing "fleeting" federal incentives such as the production tax credit and the grant program under Section 1603 of the American Recovery and Reinvestment Act, since such incentives are intrinsic to the pricing of contracts and represent a significant ratepayer benefit.

In order to increase market certainty and, where possible, minimize instances where otherwise viable projects face new and unforeseen obstacles due to avoidable regulatory delays, EDF Renewable Energy recommends that the Commission establish target dates for completion of the Commission’s review of proposed RPS contracts. Specifically, EDF Renewable Energy proposes the following processing time targets for uncontested review requests:

<u>Submission</u>	<u>Review Completion Target</u>
Tier 1 Advice Letter	30 days
Tier 2 Advice Letter	60 days
Tier 3 Advice Letter	90 days
Application	120 days

EDF Renewable Energy recognizes that staffing constraints and other factors could lead to the above target dates not being realized. It is essential for the state of California to address such staffing issues if it is to foster continued ratepayer benefit and economic development benefits in a time of persistent federal incentive uncertainty. However, the simple fact that the Commission has established such targets would unquestionably foster greater confidence among the development community and should translate into even more robust responses to the IOUs’ RPS solicitations.

C. The Commission Should Direct the Utilities to Include a Summary Table in Each Review Request Filing.

EDF Renewable Energy recommends that the Commission direct the IOUs to include at the beginning of each such filing a summary table that identifies: (1) each showing or other requirement that must be met in order for the approval request to be granted; (2) a brief statement of whether and how the requirement has or has not been met; and (3) a reference to the section of the advice letter or application in which the required showing or requirement is addressed. EDF

Renewable Energy believes that this simple tool would greatly simplify and otherwise facilitate the review of the IOUs' approval requests by both staff and interested parties.

III. CONCLUSION

For the above reasons, EDF Renewable Energy urges the Commission to adopt the proposed process reforms set forth in the ACR with the following modifications:

- Modify the "Contract Terms" prerequisite to allow for expedited review of proposed RPS contracts with modified terms that do not increase ratepayer risk; and
- Establish target dates for completion of the Commission's review of uncontested RPS contract review requests.
- Require the IOUs to include a summary table listing the various requirements for approval and related information in each RPS contract review request filing.

Respectfully submitted,



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VERIFICATION

I, Gregory S. G. Klatt, am counsel for the EDF Renewable Energy, Inc. and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of Comments of EDF Renewable Energy, Inc. on Procurement Reform Proposals, filed in R.11-05-005, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on November 20, 2012, at Woodland Hills, California.



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