

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

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

R. 11-05-005
(Filed May 5, 2011)

**SIERRA CLUB CALIFORNIA COMMENTS ON THE SECOND ASSIGNED
COMMISSIONER'S RULING ON RPS PROCUREMENT REFORM PROPOSALS**

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I. INTRODUCTION

Sierra Club submits these comments (the “Procurement Reform Comments”) on Commissioner Ferron’s October 5, 2012 Assigned Commissioner’s Ruling issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals (the “ACR”). We thank the Commission for exploring ways to refine and improve its RPS procurement process. The proposals within the ACR represent an important step forward towards creating a transparent, efficient and robust RPS program that will serve as a model for other regions. Although these Procurement Reform Comments focus on a few discrete proposals, we support the Commission’s efforts generally and in particular support the concept of using standards of review to enable the Commission to better evaluate the IOUs procurement decisions. These Procurement Reform Comments supplement the joint comments we submitted with Defenders of Wildlife, Natural Resources Defense Council and the Nature Conservancy (the “Conservation Group Comments”). The Conservation Group Comments introduce important concepts related to reforms to the Project viability Calculator, a new environmental screening process, and proposed environmental standard terms and conditions (collectively, the “Environmental Mechanisms”). We recommend the Environmental Mechanisms be incorporated into the procurement process for all contracts.¹

Capitalized terms not defined herein shall have the meaning given in the ACR.

¹ We understand that the full suite of Environmental Mechanisms may be an imperfect fit for all contracts but it is our belief that some variation of these could be used for each variation contract. For example, although most contracts less than five years in duration will be extensions for existing projects which have already been permitted, it would still be appropriate to incorporate new environmental terms and conditions, while REC facilities can often have environmental impacts which could be captured through an environmental screen.

II. THE PROPOSED STANDARDS OF REVIEW FOR IOU SHORTLISTS ARE REASONABLE. (4.1).

Sierra Club supports the ACR proposal to submit shortlists via a Tier 3 Advice Letter. Stronger review and opportunities for participation earlier in the procurement process will weed out projects with glaring fatal flaws---avoiding wasting IOU, agency and developer resources on projects with the most egregious environmental conflicts or other viability concerns.

We support the proposed SOR for the shortlist. Understanding that there is often incomplete environmental information at the shortlist, we recommend the SOR include consistency with the IOU's procurement plan or Renewables Net Short (RNS), and some process for environmental evaluation such as a certain score on the environmental screen and revised permitting screens proposed in the Conservation Group Comments. We also recommend that the IE uses this information in assessing whether the shortlist was fairly selected.

III. THE PROPOSAL FOR A DATE CERTAIN TO REQUEST COMMISSION APPROVAL OF CONTRACTS SHOULD INCORPORATE FLEXIBILITY FOR ENVIRONMENTAL ANALYSIS TO BE INCORPORATED. (4.2)

The ACR proposes to require contracts to be executed within one year of shortlist approval and filing with the Commission within one month of execution. The proposal is a generally reasonable approach to ensure procurement is conducted with current information rather than stale data. However, because obtaining environmental information often involves

collecting multi-year seasonal data, a longer period of time between selection of the shortlist and contract execution and approval could allow for important biological information to become available, and for environmental and permitting screens to be updated accordingly. This issue could potentially be addressed by giving greater weight to scores on the environmental or permitting screens when selecting or evaluating the shortlist.

IV. EXPEDITED REVIEW OF RPS PURCHASE AND SALE CONTRACTS (4.3)

Sierra Club does not take a position at this time on the ACR proposal to modify the process for some Advice Letters to Tier 2 review rather than Tier 1 for contracts greater than five years. In response to Question 7, Sierra Club supports incorporation of the environmental and viability screens proposed in the Conservation Group Comments.

V. PROPOSED STANDARDS OF REVIEW FOR PPAs FROM SOLICITATIONS (4.4A).

Sierra Club supports the SOR proposed in the ACR, and recommends that these SOR should be used to determine whether the contract should be approved, rather than as a trigger to determine a particular level of review. Additionally, Sierra Club supports incorporation of each of the Environmental Mechanisms for PPAs from solicitations.

VI. THE COMMISSION SHOULD MAINTAIN A PREFERENCE FOR COMPETITIVE SOLICITATIONS OVER BILATERAL POWER PURCHASE AGREEMENTS. (4.4(B)).

The Commission has expressed a preference for IOUs to source renewables contracts from competitive solicitations.² This preference is reasonable because there is currently a large pool of highly viable, well-sited, and cost-competitive projects. Accordingly, bilateral contracts are not generally necessary to secure the most viable projects on behalf of customers at this time. The cohort of projects identified in Table 3 presents a fair pool with which to evaluate bilateral contracts. The SOR presented in Table 3 are well-reasoned and accurately capture whether bilateral contracts are bona fide “fleeting” opportunities, representing very highly viable projects with firm commercial operation dates³. At a minimum, bilaterally negotiated contracts should be subject to all Environmental Mechanisms.

VII. THE PROPOSED STANDARDS OF REVIEW FOR AMENDED CONTRACTS ARE REASONABLE. (4.4 (C)).

Sierra Club supports the ACR proposal to require the IOUs to submit substantial contract amendments for review and approval. We agree with the Commission regarding the need for definitive procedures and standards for evaluating contract amendments and amended and

² Proposed Decision of ALJ DeAngelis Conditionally Accepting 2012 RPS Procurement Plans, at 55. R.11-05-005.

³ Additional means to ensure these contracts represent fleeting, high-value opportunities could include reduced confidentiality protections for bilaterally negotiated contracts or greater Commission review.

restated contracts (collectively, “Amendments”). Comparing Amendments to both shortlisted bids from the most recent solicitation and all PPAs executed in the 12 months prior to contract execution is a fair balance between current market conditions and investments based on previously approved contracts.

Most contract amendments are required because for a range of reasons, the project is simply not viable and will not go forward on the terms originally negotiated. We support the proposed distinction between “substantial amendments” and minor amendments which are essentially “contract administration” matters and do not signal real viability risks. The preliminary list of “substantial amendments” captures most amendments which indicate viability risk. However, we also recommend “substantial amendments” include revisions which extend development milestones to obtain permits, or otherwise revise provisions regarding permits. Delays in obtaining permits, particularly wildlife permits, often indicate that the project site has a particularly high conservation value, which may not have been known or fully quantified at contract execution.

We generally concur that a change in the point of interconnection is a substantial amendment as it usually indicates a new location with very different natural resource attributes, which should trigger application of the revised permitting and new environmental screens presented in the Conservation Group Comments. However, if possible, we want to incentivize developers and IOUs replacing sites with high ecological values with lower-impact sites. One concept could be treating some amendments which change the point of interconnection because of substitution of a site with another for conservation reasons as an “Environmentally Beneficial Change” with a showing that the replacement site scores well under the environmental and revised permitting screens and is effectively replacing a site of greater ecological value. An

Environmentally Beneficial Site Change could potentially be treated as a non-substantial amendment.

Sierra Club strongly supports the Table 4 SOR requiring IOUs to provide updated information within one week of filing Amendments, and monthly information updates, particularly pertaining to updated project viability environmental and permitting scores, as information relevant to these scores follows a schedule which imperfectly tracks the procurement process and which may not have been available at the shortlist or contract execution.

Sierra Club is concerned that requiring Amendments which change technology re-bid into the next RPS solicitation may disincentive generators from making technology changes that benefit the environment. For example, conservation organizations have often encouraged changing from wet to dry-cooling to reduce water impacts, or to use modular technologies which might provide greater ability to avoid valuable habitat features. Accordingly, technology changes for environmental reasons should be incentivized, perhaps by exempting a technology change based in natural resource considerations from a requirement to bid into the next RPS solicitation by considering it an Environmentally Beneficial Change or through some other mechanism. Additionally, because of strong policy reasons to incentivize energy storage, we recommend that the incorporation of storage technology should not trigger re-bidding into the next RPS solicitation, or if the Environmentally Beneficial Change concept is adopted, be considered such an Environmentally Beneficial Change.

VIII. PROPOSED STANDARDS OF REVIEW FOR PPAs BEYOND THE SCOPE OF THE ADVICE LETTER PROCESS. (4.4 (D)).

The ACR proposal identifies an appropriate path for allowing consideration of contracts that do not meet the criteria for streamlining, including emerging technologies, and extraordinarily large contracts. However, for policy reasons the Commission should distinguish and exclude as emerging technologies projects which include energy storage, but use otherwise commercially proven technologies (i.e., wind or solar with storage).

In addition, projects with multiple contracts with the same utility, or phased projects with the same utility should be treated as a single project for the purposes of assessing the percentage of sales to increase transparency. Factors to be considered when determining if a project is part of a phased project could include the necessity for a shared use or shared facilities agreements and a common parent company and point of interconnection.

IX. PROPOSED STANDARDS OF REVIEW FOR UNBUNDLED RECs (4.5).

The ACR proposal outlines reasonable criteria to evaluate cost aspects of contracts for unbundled RECs. However, additional environmental screening is necessary to ensure the purchase furthers the purpose of the RPS program. Since facilities need to be operational to be eligible for credit sales, it is reasonable to apply some level of viability criteria, using the updated permitting screens and environmental screening recommended by the Environmental Groups as a starting point. The Commission should also consider other impacts from REC-only contracts, such as curtailment issues, and the potential for the project underlying some RECs to incentivize

fossil fuel generation.

X. RPS INDEPENDENT EVALUATOR REPORTS. (4.6).

The ACR proposes reporting guidelines for independent evaluator (“IE”) reports. Sierra Club supports these reporting guidelines and the use of the IE providing substantive recommendations and additionally recommends that the IE evaluate the application of the environmental screen and revised permitting screen, and incorporate this analysis in its substantive evaluation and recommendations.

XI. IMPROVEMENTS TO LEAST-COST AND BEST-FIT BY PLANNING FOR RENEWABLES.

The Commission is currently required to develop “a process that provides criteria for the rank ordering and selection of least-cost and best fit eligible renewable energy resources to comply with the [RPS] on a total cost basis.”⁴ This requirement to plan for the least-cost and best-fit (“LCBF”) resources is an important issue to address because the current LCBF process is based on fitting new renewable resources into a legacy system based around fossil fuel, rather than the electricity system of the future that can run primarily on renewable energy. Sierra Club looks forward to participating in this process, either through this ACR or a subsequent ruling, and encourages the Commission to organize workshops and make data available related to this issue.

⁴ Public Utilities Code Section 399.13(a)((4)(A). (emphasis added).

The Commission has neglected to coordinate RPS procurement planning with integrated resource planning efforts such as long-term procurement plans (“LTPP”). If this is not remedied, the lack of planning for renewables could potentially allow for the uncoordinated siting of resources that do not best fit load shape and geographic characteristics of electricity demand. Even though these procured resources would qualify for RPS compliance, the potential imbalance of product types and load shape could lead to an operational scenario where renewables procurement does not optimally reduce costs, use of fossil fuel, and greenhouse gas emissions. For example, peaking as-available resources (e.g. solar) may match demand during daytime peak hours, but require complimentary non-peaking as-available (e.g.) wind, and baseload resources (e.g. biogas) or storage attributes to deliver electricity at times that reduce the need for operating fossil fuel-powered peaker plants.

In a potential future state of renewables procurement, there may be excess supply of electricity during peak hours, where renewable generation is purchased but curtailed, reducing and distorting the market value of the resource. The shortfall is then backed up with fossil fuel generation, unless demand management, renewable baseload resources, and storage attributes are planned and developed. Excess purchases of fossil fuel could result from an imbalanced and poorly planned portfolio of renewables.

The Commission is required to implement the loading order in an ongoing manner to procure efficiency, demand response, and renewable generation before procurement of fossil fuel generation.⁵ The legislature intended for RPS implementation to be “[d]isplacing fossil fuel consumption within the state,”⁶ “[r]educing air pollution in the state,” “[m]eeting the state’s climate change goals by reducing emissions of greenhouse gases associated with electrical

⁵ California Energy Commission, Energy Action Plan II, 2005; D.07-12-052; D.12-01-033.

generation,” and for the program to obtain “the greatest environmental benefits for California residents.”⁷ The law also requires the Commission to show that the RPS procurement plans will achieve a balanced portfolio.⁸

The Commission has previously ignored the need to plan for a best fit. Now, with this ACR and the opportunity to engage in procurement reforms which will create a more transparent and efficient planning process, the Commission has an imperative to plan - to take into account the environmental benefits and avoided costs of a future-state electricity system that is designed to optimally displace fossil fuel use and replace it with renewable energy projects with low environmental conflicts.

The Commission is currently required to develop “a process that provides criteria for the rank ordering and selection of least-cost and best fit eligible renewable energy resources to comply with the [RPS] on a total cost basis.”⁹ The process must take into account indirect costs associated with expenses resulting from integrating and operating renewables,¹⁰ and project viability risk.¹¹ The Commission should determine what renewable resources constitute a “best fit” through a integrated resource planning process that optimizes the operation of the electricity grid. Major factors which for consideration in determining a “best fit” could include: (1) the on-the ground impacts to species and habitat from specific renewable projects, (2) coordination with land-use processes such as the Desert Renewable Energy Conservation Plan (DRECP), (3) ensuring that projects will not result in guiding development to areas with high conservation value through transmission improvements,¹² (4) the utilization of existing transmission lines and

⁷ Public Resources Code Section 25740.5(c)

⁸ Public Utilities Code Section 454.5(b)(9)(B); see also Public Resources Code Section 25740.5; Public Utilities Code Section 399.11(b)(6); Public Utilities Code Section 454.5(b)(9)(B).

⁹ Public Utilities Code Section 399.13(a)((4)(A). (emphasis added).

¹⁰ Public Utilities Code Section 399.13(a)((4)(A)(i).

¹¹ Public Utilities Code Section 399.13(a)((4)(A)(iii).

¹² This list is preliminary only, and we again encourage the Commission to address this issue in a workshop.

rights of way to reduce environmental impacts from constructing new transmission lines, (5) the utilization of the distribution grid to achieve benefits of distributed generation, including minimization of line losses and excess demands on transmission capacity, (6) coordinating attributes of renewable resources, including geographic load basin and electricity product type, with the load shape and demand attributes in each load basin, (7) procurement of a balance of specific electricity product types and storage to match geographic load shape and demand attributes, to displace fossil fuel use,

The Commission should develop several alternative scenarios that refine and implement LCBF in a way that achieves these goals. The process should make data available to Parties on the operational needs of the grid such that Parties can meaningfully comment. The forum for this process may be based in either the LTPP or the RPS proceeding, but will require coordination of both. The Commission should also consult with the CAISO and CEC and other appropriate agencies regarding energy resources planning efforts such as the Integrated Energy Policy Report (IRPR), and the DRECP. After the Commission approves this integrated resources plan (“Plan”), this Plan should be integrated and made consistent with the Long-Term Procurement Plan scenarios and the Renewables Net Short (RNS). The Plan should be integrated into the RNS by assigning geographic and electricity product type targets within the RNS rather than one sole RNS figure. RPS Procurement Plans must then be consistent with the geographic and product type targets in the RNS, although the Commission may allow consolidation of targets on a case-by-case basis only to the extent necessary to maintain competition within a solicitation category. The RNS product type targets should also allow satisfaction of the applicable target when an alternative product such as demand response, efficiency, and storage satisfies the attributes of that product type.

When planning for lower quantities of renewables, the Commission has previously ignored the need to plan for a best fit. Now, with a statutory requirement for a 33% RPS, and likely even more ambitious renewables targets in the near future, the Commission has an imperative to plan - to take into account the environmental benefits and avoided costs of a future-state electricity system that is designed to optimally displace fossil fuel use, site renewables where projects can more reliably get built, and use transmission corridors most efficiently.

XII. ADDITIONAL REFORMS – ADVICE LETTER ACCESSIBILITY.

We additionally urge a longer review period for protesting Advice Letters, and improved public notice of Advice Letters and the Shortlist on the Commission’s website. We recommend an extension from 20 days to 30 days to protest an Advice Letter.

The e-mail notice of an Advice Letter should include a heading that clearly states that the notice is for an Advice Letter protest period. The notice should state the length of the protest period, specifying the deadline to file a protest. The notice should include references to where to access the Advice Letter, including a link to the Advice Letter. The Commission should include links to all procurement Advice Letters on one web page so that the public may access recent distributions for those that were not subscribed to the list. The notice, and the web page should also include a link to the appropriate service lists that a protest must be served upon. Currently, the only way a member of the public may learn about an Advice Letter is to already be a party to the RPS proceeding, or be subscribed to the Advice Letter service list, which can be cumbersome for individuals to navigate to. Individuals and organizations seeking to protest a specific Advice Letter may be focused on a specific project, and do not have the resources to track all documents

in the proceeding. These accommodations will improve accessibility and transparency to the public.

Respectfully Submitted,

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November 20, 2012

VERIFICATION

I am the attorney for Sierra Club and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in this pleading are true.

I declare under penalty of perjury that the matters stated in this pleading are true and correct.

Executed on the **20th day of November, 2012**, at Berkeley, California.

/s/ Andy Katz

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