

**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)

**COMMENTS OF TRANSWEST EXPRESS LLC ON
ASSIGNED COMMISSIONER'S RULING ISSUING
PROCUREMENT REFORM PROPOSALS AND ESTABLISHING
A SCHEDULE FOR COMMENTS ON PROPOSALS**

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Dated: November 20, 2012

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Pursuant to the October 5, 2012, “Second Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals” (“October 5 Ruling”), TransWest Express LLC (“TransWest”) respectfully submits comments to the California Public Utilities Commission (“Commission”) regarding certain of the new proposals.¹

TransWest appreciates the continued efforts of the Commission and the Assigned Commissioner to offer further refinements and improvements to renewables procurement policies to further efforts of attaining the State’s Renewables Portfolio Standard (“RPS”). TransWest generally concurs with the Assigned Commissioner’s stated aims of streamlining and expediting procurement review and incorporating sufficient transparency to assure a fair process. As TransWest has indicated in past comments in this and related proceedings, including those filed in response to the Assigned Commissioner’s April 5, 2012, ruling in this docket, it is critical to allow for flexibility in the procurement process and avoid policies that too narrowly restrict procurement guidelines in order to meet the State’s overarching goals of meeting the

¹ TransWest moved for party status in this proceeding on May 31, 2011. A full description of TransWest is set forth in its Initial Comments submitted August 8, 2011.

aggressive 33% RPS while assuring value, cost efficiency and just and reasonable resulting rates for ratepayers.²

COMMENTS

A. Viability Screens and Milestones Addressing Interconnection Progress and Transmission Upgrades Must Have Adequate Flexibility to Assure Fair and Nondiscriminatory Treatment of Competing Projects

TransWest generally concurs with the October 5 Ruling's proposal for streamlined review of RPS power purchase agreements ("PPAs") with terms of five years or greater using commercially proven technologies³ so long as streamlined review is applied in an equitable manner to *all* solicited bids including those associated with procurement of out-of-state projects. TransWest is also supportive of the October 5 Ruling's affirmation of the principle that beneficial procurement opportunities may in some instances arise through bilateral negotiation of PPAs rather than through solicitation.⁴ This is important because, by building greater flexibility into approved RPS procurement policies including procurement through bilateral negotiation, the Commission can help ensure the greatest range of economic procurement options for investor-owned utilities ("IOUs") so that utilities can then capture the economic benefits of the least-cost, highest quality renewable resources for ratepayers.

In the case of each of these types of procurement—streamlined bids with long-term PPAs using commercially proven technology and bilateral contracting—the October 5 Ruling would require similar viability screens or milestones to be met as they pertain to

² *See generally* Comments of TransWest at 5-12 (filed Jun. 27, 2012) ("June 27 Comments") (discussing the need for holistic review of bids and procurement proposals to ensure that the appropriate focus is given to overall delivered cost to ratepayers of renewables procurement, rather than a narrower evaluation of specific components, e.g., transmission-related costs).

³ *See* October Ruling at 12.

⁴ *See id.* at 21-25 (proposing Tier 3 Advice Letter review procedures for contracts resulting from bilateral negotiations outside a solicitation process).

interconnection progress and required transmission. Specifically, those screens are (i) a “Phase II Study or Facilities Study (or equivalent)” for interconnection⁵ and (ii) “a Permit to Construct or an approved Notice of Construction” for any required transmission upgrades or “an equivalent status” for upgrades that do not require Commission approval.⁶ Questions 7 and 11 request comments on the appropriateness of these viability and milestone screens for, respectively, streamlined Advice Letter review of long-term PPAs, and review of bilateral PPAs.

In applying these criteria to both categories of procurement, TransWest urges the Commission to continue to ensure flexibility in evaluating the various metrics that may qualify as “equivalent” viability measures for projects not interconnecting directly with the California Independent System Operator Corporation (“CAISO”) and that may not require upgrades requiring Commission approval. TransWest believes the October 5 Ruling, as proposed, has appropriately provided for such a flexible approach by referring generically to “equivalent” progress on these viability measures. As noted in TransWest’s June 27 Comments, such equivalent measures could include utilizing results of any inter-regional project coordination study done by the CAISO and others for resources delivered from out-of-state.⁷ Equivalent measures could also include the overall economic evaluation of the cost of delivered power—including incorporation of any transmission cost estimates—performed internally by an IOU, the Western Electricity Coordinating Council (“WECC”), the CAISO, the Commission or other appropriate regional planning group. The Commission should also acknowledge the adequacy of other equivalent measures of viability in these contexts. For example, to evaluate transmission

⁵ October 5 Ruling at 14-15, 23.

⁶ October 5 Ruling at 14-15.

⁷ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. P 31,323 (2011) (requiring independent system operators such as the CAISO and other entities to develop inter-regional transmission planning processes).

infrastructure viability for projects delivering renewable energy over new facilities developed over federal lands, a Bureau of Land Management (“BLM”), or other federal land management agency, Record of Decision approving the rights-of-way for construction and operation of transmission facilities is at least equivalent to the measures cited in the October 5 Ruling. Similarly, the WECC procedures for regional planning project review and project rating provides another relevant benchmark to assess the viability of planned renewables-related infrastructure development.⁸ Also, significant progress in multiple areas can serve to demonstrate project viability. For instance, a project for which a Final Environmental Impact Statement (“EIS”) has been issued containing an Agency Preferred Alternative, in conjunction with the completion of Phase II in the WECC process resulting in an “accepted rating,” signify a major project milestone. Moreover, with respect to viable interconnection progress, for renewables projects that are imported directly into the State through a transmission-to-transmission interconnection, the transmission interconnection process with the relevant California transmission owner (“TO”) can provide equivalent benchmarks for assessing interconnection progress of out-of-state projects.

TransWest does not offer these examples to imply that an overly specific approach be adopted in procurement policies when refining viability measures for the Commission’s RPS procurement review. Rather, TransWest urges the Commission and its Energy Division to continue to be mindful of the range of jurisdictions, federal and state agencies, and other relevant bodies such as WECC that may have authority to review, authorize and permit the infrastructure needed to bring the most economic, high quality renewable resources to the State, including those located out-of-state that will not directly interconnect with

⁸ In general, the WECC process has three phases. At the end of Phase II, the project receives an “accepted rating.” In the final phase, Phase III, the project’s plan of service is implemented.

the CAISO. This is especially true at this juncture of the renewable procurement process, where much of the desirable “low-hanging fruit” of the State’s renewable resources have already been developed or are in the pipeline to be sold to the State’s utilities through already-approved PPAs.

B. Standards of Review for PPAs that are Beyond the Scope of the Commission’s Advice Letter Process

The October 5 Ruling also proposes new standards for reviewing PPAs that are beyond the scope of the Advice Letter process, citing as examples projects that may have a worse net market value than comparable contracts or contracts that “introduce higher risk into an IOU’s RPS portfolio because they represent a significant portion of that portfolio.”⁹ With respect to the latter issue, the October 5 Ruling proposes that any contract that is “expected to annually provide more than one percent of the IOU’s total bundled sales in its first full year of deliveries should be filed as an application”¹⁰ While TransWest acknowledges there may be a need for adequate process to review contracts for procurement that otherwise fall outside the parameters for streamlining, TransWest urges the Commission to carefully weigh the need for adequate review with principles of fairness, and nondiscrimination as between competing solicitation proposals.

Specifically, Question 16 asks for comments as to how projects with “multiple contracts for total facility capacity and projects with contracts for multiple phases” should be treated under this proposal.¹¹ It is unclear why this scenario would present an issue for RPS procurement that warrants potential review under full Commission application procedures. TransWest assumes that the Assigned Commissioner may be concerned with multiple affiliated project developments that, in the aggregate, may represent one percent or greater of an IOU’s

⁹ See October 5 Ruling at 29-30.

¹⁰ *Id.* at 30.

¹¹ *Id.* at 32.

total bundled sales thereby increasing relative risk. However, if a large wind or solar development is constructed and developed in distinct phases, with those phases separately bidding into RPS solicitations resulting in multiple contracts, each individual contract should be evaluated on its own merits under applicable procedures (including streamlined procedures if the contract otherwise qualifies for streamlining). Any risk associated with a particular phase of an overall project development would be embodied within the four corners of each separate and distinct PPA negotiated for that phase. In this regard, development, long-term performance and other risks would appropriately be evaluated by the Commission no differently than it would be by lenders in a typical project financing of a phased renewable development in the procurement review process as a single procurement for purposes of calculated expected annual generation. In addition, risk related to review of price would similarly be limited, as it should be, to the price presented in each distinct PPA.

TransWest recognizes that there may be certain complexities to review of larger overall project developments, including the need, for example, to evaluate the viability of relatively larger transmission additions and upgrades and lengthier permitting processes. However, after years of implementing the Commission's RPS procurement program, the Energy Division Staff is well equipped to review these issues initially through an Advice Letter process, rather than forcing IOUs to artificially aggregate otherwise separate PPAs and place them before the Commission in a complex and significantly more lengthy application process. Such an approach would unfairly penalize developers of larger projects which, for legitimate project development, financing and other objectives have been broken into smaller phased pieces and it would also penalize ratepayers, who may well lose out on the benefits that larger-scale projects can bring to the State.

In addition, the October 5 Ruling would propose that contract price, terms and conditions would be completely public during the application process and part of the public record. This proposal is not needed, is contrary to existing Commission policy,¹² and should be rejected. Developers and IOUs have long had assurance that PPAs would be placed before the Commission on a confidential basis, providing significant benefits to both sides. Developers are assured that their competitors do not have “real-time” access to the price, terms and conditions of their contracts, while IOUs maintain the benefit of soliciting and negotiating contracts without suppliers seeing recently executed contracts by their counterparty. There is no need for such commercially sensitive information to be revealed publicly in the Commission application process. It would have a profound chilling effect on competitive solicitations for relatively large-scaled renewable projects. Moreover, the Commission and its Staff have more than adequate price data to make a least-cost, best-fit and price reasonableness assessment, without taking the extraordinary step of forcing price and other terms to be public, before a contract is even approved. This data is available through the multiple contracts that are placed before Energy Division Staff for review every year, data required to be submitted to the Commission under procurement filings required by SB 2 (1X) and the aggregate price data required to be released by the Commission under Section 911 of the Public Utilities Code.

¹² *See Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission, D.06-06-066 (2005).*

Respectfully submitted,

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On behalf of TransWest Express LLC

Dated: November 20, 2012

VERIFICATION

I am an officer of TransWest Express LLC, and am authorized to make this verification on its behalf. I have read the foregoing *Comments of TransWest Express LLC On Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals*, dated November 20, 2012. The statements in the foregoing document 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. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of June, 2012, at Denver, Colorado.

/s/ Roxane J. Perruso

Roxane J. Perruso
Vice President
TransWest Express LLC