

**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)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON THE SECOND ASSIGNED
COMMISSIONER'S RULING ISSUING PROCUREMENT
REFORM PROPOSALS**

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Dated: December 12, 2012

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The Independent Energy Producers Association (IEP) offers the following reply to the comments submitted in response to the *Second Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals*, (ACR), issued on October 5, 2012.

Overall, most of the parties, including IEP, support efforts to improve the efficiency of the procurement and contracting process for renewable resources. Many parties, including IEP, identify the need for reforms that improve the process. On the other hand, most parties, including IEP, were particularly concerned that reforms should not slow down timely review and approval of contracts any more than what occurs today. The risk of negative indirect effects is present, and parties’ concerns about those potential effects should be fully considered before implementing major reforms. At this point, IEP recommends that the Commission’s reform initiative should be guided by the medical maxim, “First, do no harm.”

I. **PROPOSALS FOR ADDITIONAL ENVIRONMENTAL SCREENING MEASURES COULD EXPOSE DEVELOPERS TO A FORM OF DOUBLE JEOPARDY**

The Environmental Groups¹ urge the Commission to expand the scope of the proposed reforms to include additional environmental screening measures in the Project Viability Calculator (PVC) and Least-Cost/Best-Fit (LCBF) methodology. While recognizing that the current PVC explicitly evaluates permitting status as a development milestone affecting viability and the existing LCBF includes an “environmental stewardship qualitative factor,” the Environmental Groups argue that protected species and other natural resources that impact—and may prevent—project development must be accounted for in the PVC and LCBF methodology. They suggest that an improved approach to environmental screening will allow utilities to use a clear and transparent methodology to identify and de-prioritize projects that present significant environmental risks.

IEP is concerned that the proposal to reform or expand the environmental screens in the PVC or LCBF methodology exposes renewable resource developers to a form of double jeopardy. Currently, to obtain permits from certain agencies, developers must commit to or comply with a host of environmental rules and conditions, *i.e.*, developers must pass numerous “environmental screens.” Reforming the PVC or LCBF methodology to provide an additional screening mechanism beyond the conditions prescribed in the permits simply provides a duplicative review of issues already addressed in the permitting process and “second bite at the apple” for project opponents.

The status of a project’s permit already is a factor in the PVC or LCBF methodology. If the Commission wants to give greater weight to environmental factors, instead

¹ The Environmental Groups include the Natural Resources Defense Council, Sierra Club, the Nature Conservancy, and Defenders of Wildlife.

of adding additional screens to the PVC or LCBF methodology, the Commission should increase the relative weight of having a valid permit in bid evaluation, because the holder of a valid permit will have met all the environmental conditions required by law and regulation.

II. THE PROPOSED STANDARD ENVIRONMENTAL TERMS AND CONDITIONS COULD HINDER CONTRACTING

The Environmental Groups propose to modify the utilities' Renewable Portfolio Standard (RPS) form contracts. The stated intent of this proposal is to reduce environmental impacts, particularly with respect to operations, of projects selected by the utilities. In addition, the Environmental Groups suggest that contracts should address the liability for lost output that may arise in connection with operational mitigation measures.

Any operational constraints need to be prescribed in advance, before the contract is executed. Advance notice of the limitations enables parties to "price" the imposed operational constraint in the bid and address the risk of the constraint commercially through the contracting process. To be commercially acceptable, any operational constraints imposed on renewable resources must be transparent, quantifiable, and relevant to the goals of the RPS and other state policies. Here again, it would be unhelpful and costly to impose additional operating constraints on electric generators, particularly if parties were simply attempting to obtain operational constraints at the Commission through contracting that they were unable to obtain during permitting.

III. TIMELINES FOR EXPEDITED REVIEW

Many parties, including IEP, support expediting the review of shortlisted projects and power purchase agreements. A number of parties, including IEP, noted, however, that the reform proposals so far may not shorten the time for project review. For example, if time limits are not placed on the Commission's review of the utilities' shortlists, little may be accomplished

and, even worse, final approvals may take longer. Similarly, developing timelines for review that are disconnected from the interconnection timeline in the transmission and generation planning process of the California Independent System Operator (CAISO) may not result in positive outcomes. Southern California Edison Company suggests that the Commission should establish a defined timeline for approval of RPS solicitation shortlists to decrease the uncertainties and potential for delay in that portion of the process. IEP agrees.

IEP recommends that the Commission should assess more fully the linkages between the Commission's contract review and approval process and the CAISO's interconnection process. Furthermore, hard deadlines should be imposed on the Commission's contract review and approval process to ensure more efficient review of contracts once they are submitted for approval.

IV. CONTRACT AMENDMENTS THAT ARE NOT MATERIAL SHOULD BE AFFORDED EXPEDITED TREATMENT

As proposed in IEP's Comments, contract amendments that significantly change the original contract should face a higher standard of review, *i.e.*, a showing that the amended contract provides demonstrably higher ratepayer value than would otherwise occur. A number of parties have suggested that modest amendments to contracts should be afforded expedited review. IEP agrees and recommends that: (a) proposed contract amendments representing no material change (from a ratepayer perspective) should be afforded expedited review; (b) proposed contract amendments that cannot demonstrate demonstrably higher ratepayer benefits than would otherwise occur should be treated as new contracts; and (c) proposed contract amendments that can demonstrate demonstrably higher ratepayer benefits than would otherwise occur should be subject to a lower standard of review than a new contract.

Respectfully submitted this 12th day of December, 2012 at San Francisco, California.

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By /s/ Brian T. Cragg

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VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Reply Comments of the Independent Energy Producers Association to the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals," dated December 12, 2012. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of December, 2012, at San Francisco, California.

/s/ Brian T. Cragg

Brian T. Cragg