

**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  
COALITION OF CALIFORNIA UTILITY EMPLOYEES  
ON THE SECOND ASSIGNED COMMISSIONER'S RULING ISSUING  
PROCUREMENT REFORM PROPOSALS**

December 12, 2012

Marc D. Joseph  
Jamie L. Mauldin  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Suite 1000  
South San Francisco, CA 94080  
Telephone: (650) 589-1660  
Facsimile: (650) 589-5062  
mdjoseph@adamsbroadwell.com  
jmauldin@adamsbroadwell.com

Attorneys for the Coalition of  
California Utility Employees

**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  
COALITION OF CALIFORNIA UTILITY EMPLOYEES  
ON THE SECOND ASSIGNED COMMISSIONER'S RULING ISSUING  
PROCUREMENT REFORM PROPOSALS**

Pursuant to the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals (October ACR) issued October 5, 2012, the Coalition of California Utility Employees (CUE) offers these reply comments.

The most vexing problem the Commission has faced, and which the proposed reforms attempt to remedy, is the Commission having to decide whether to approve power purchase agreements arising from long ago solicitations. However, that problem is unlikely to recur. The current renewable generation industry is much broader and deeper than it was three or four years ago, and the outstanding renewable procurement needs of the utilities are much, much less. So the utilities can easily choose projects that are advanced and viable. To be sure that this problem does not recur, the Commission should adopt the 12-month shortlist expiration proposal. But the Commission should not delegate its responsibilities to staff, so it should keep the Tier 3 Advice Letter process for power purchase agreements, and eliminate the expedited contract review altogether.

Summary of CUE's Recommendations:

- Approve proposal setting a date certain for Commission approval of contracts (Section 4.2);
- Approve proposal allowing utilities to submit RPS contracts less than five years in length via a Tier 1 Advice Letter (Section 4.3);
- Reject proposal allowing utilities to submit RPS contracts for five years or greater via a Tier 2 Advice Letter (Section 4.3);
- Reject proposed Standard of Review for shortlist submissions (4.1); and
- Reject proposed application process for those contracts who do not meet expedited review (Section 4.4).

**I. The Fundamental Problem the Proposal Seeks to Remedy is the Long Lag Time Between the RFO Solicitation and Final Commission Review of the Contracts.**

The most substantial problem the Commission seeks to remedy is the long lag between the time the utilities solicit requests for offers of new renewable generation and final Commission consideration of the resulting power purchase agreements. When there is a long delay, the Commission faces a difficult question: should the PPA be benchmarked against other projects available in the long ago RFO, or should it be compared to more recent RFOs? In Commissioner Ferron's concurrence on Resolution E-4433 approving the Abengoa Mojave Solar project, he stated that "the only practical way for this to work is for the overall value of a project to be evaluated upfront at the time of solicitation, rather than at the end of the process as we do now. A consistent, transparent, and well-designed cost methodology...will reduce the market uncertainty that the current process causes when an individual contract comes before the Commission for final review."<sup>1</sup>

This remark came after several solar projects were finally approved after years of negotiations and changes in the contracts. The North Star Solar project,

---

<sup>1</sup> Resolution E-4433, Concurrence of Commissioner Mark J. Ferron on E-4433 on November 10, 2011.

Abengoa Mojave solar project, and the BrightSource Ivanpah projects all were forced to renegotiate the terms of their PPAs because the underlying circumstances had changed. The contracts and projects changed through no fault of the developers, but this delay made benchmarking the PPA that finally appeared before the Commission difficult. Because of the long time lapse between short listing those projects and final PPAs submitted for approval, these PPAs no longer appeared to be competitive with newer alternatives.

For example, the Abengoa Mojave project was originally bid into the PG&E's 2007 solicitation but the final contract was not approved until 2011. Similarly, the North Star solar project was approved in 2011 after selection in PG&E's 2009 RPS solicitation. Commissioner Ferron commented that he found this project uncompetitive with more recently-offered projects, but he did not think it appropriate to compare the cost of this project to the 2011 solicitation pool.<sup>2</sup>

The good news here is that much of the reason for these difficult situations no longer exists. At the time these projects were first shortlisted, the utilities had a very great need for renewable generation and few options to meet their need.

Since those early procurement proceedings, our pool of developers has grown exponentially and matured through several years of experience. The turmoil of early renewable development is gone. Most of the generation needed to satisfy the 33% RPS goal is already under contract. Commissioner Ferron's previously expressed frustration with the rapidly changing and uncertain market led to this well-organized and thoughtful proposal. But the concerns which prompted the

---

<sup>2</sup> Remarks for Resolution E-4436 Item 39/39a North Star Solar.

proposal have largely resolved on their own. The RPS procurement process has been refined through years of proceedings, comments, Commission decisions, and actual development experience. The breadth and depth of renewable generation options of 2013 will bear no resemblance to the very few options of 2007. At the same time, the need for new renewable generation is much, much less. Because of this dramatic change, the Commission should refrain from making massive overhauls to a system which now works quite well.

**A. The date certain proposal will prevent stale bids and uncompetitive final contracts.**

Section 4.2 of the October ACR seeks to set a date certain for requests for Commission approval of contracts. The ruling proposes that RPS contracts be executed within one year after the approval of the IOU's shortlist and filed with the Commission for approval within one month from the contract's execution date. This expiration date will prevent the very concern addressed in earlier Commission proceedings—contract submission years after short list selection, leading to outdated pricing and difficult market comparisons. In combination with the maturation of the RPS procurement process, this proposal will ensure minimum lag-time and keep the final negotiated contracts competitive with newer projects. The Commission should accept this section of the proposal.

**B. IOUs should continue using Tier 3 Advice Letters for approval of RPS contracts for lengths five years or greater.**

The proposal seeks to expedite review of renewable generation contracts by allowing utilities to request approval for contracts of less than 5 years by Tier 1 Advice Letters. This is appropriate.

However, approving contracts using commercially proven technologies for lengths five years or greater via a Tier 2 Advice Letter is not appropriate.

The Commission should continue its long-held practice of reviewing RPS contracts through Tier 3 Advice Letters. The Commissioners, not staff, should make these decisions. This system, although somewhat time-consuming, has worked effectively for years to approve the most viable projects presented to the Commission. Moving to a lesser standard of review for major contracts is simply inappropriate. The Tier 3 Advice Letter submission allows the Commission to exercise its judgment during contract approval and also leaves room for developing technologies. As discussed in our Opening Comments, requiring projects using newly-developing technologies to undergo the application process will bias the developers and suppliers from bringing more advanced technologies for approval.<sup>3</sup>

The proposal acknowledges that an earlier attempt to expedite the process has rarely been used and no contracts have been approved pursuant to it.<sup>4</sup> The Commission should therefore maintain its practice of using Tier 3 Advice Letters for all power purchase agreements of five years or more to ensure that Commission scrutiny is maintained in contract approval while also nurturing developing technologies. Changing this process is just not necessary.

**C. Proposed Standards of Review for both shortlists and PPAs should be rejected.**

Section 4.1 proposes using Tier 3 Advice Letters for shortlist submissions, in an effort to expedite the later contract review process. However, there is no

---

<sup>3</sup> CUE Opening Comments on October ACR, p. 3.

<sup>4</sup> October ACR, p. 11.

guarantee that focusing more on the shortlist will save time in final contract review—especially considering the proposal’s stringent requirements for expedited approval, as discussed below. SCE’s comments state that without any corresponding improvements to the rest of the procurement and contract review process, obtaining approval for RPS PPAs and sales agreements would actually be more difficult and time consuming.<sup>5</sup> The Commission should reject this proposal and maintain IOU submission of shortlists with a Tier 2 Advice Letter.

Section 4.4 proposes that those contracts not eligible for the expedited review as articulated in Section 4.3 (discussed above), should be submitted to the Commission through the application process. Most of the IOUs noted in their opening comments that the standard for expedited review is too stringent. Because of the restrictions placed on the type of contracts that may be expedited, very few, if any, will actually meet these requirements. Then the IOUs will submit those non-eligible contracts through the application process, which takes longer than the Tier 3 review in use now. This would be exactly the reverse of what the proposal seeks.

Additionally, the proposal establishes different SORs for contracts from a solicitation, bilaterally negotiated contracts, contract amendments and/or amended and restated contracts, contracts that do not meet SOR from the first three categories, contracts for generation from a non-commercially proven technology, and contracts representing a significant portion of an IOU’s portfolio. Creating different standards of review for all these types of PPAs will unnecessarily complicate the

---

<sup>5</sup> Southern California Edison Company’s Comments on the Second Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals, p. 4.

process. The system should use the same SOR for all contracts, in order to avoid confusion and more delay.

The Commission should not adopt Sections 4.1 and 4.4 of the proposal. These attempts at streamlining and expediency will ultimately cause delay and regulatory uncertainty.

### **III. CONCLUSION**

The October ACR presents several strategies for solving problems that no longer exist. They should not be adopted. However, to the extent that they could recur, the date-certain contract offer expiration will address the Commission's noted frustrations with past RPS procurement inefficiencies by ensuring timely proposals are put before the Commission. Additionally, the Commission should maintain its practice of requiring Tier 3 Advice Letters for power purchase agreements and should reject its proposals for changed SORs, for shortlist bids, and also the contract review process because these changes will ultimately create more delay in PPA approval.



December 12, 2012

Respectfully submitted,

*/s/*

---

Marc D. Joseph

Jamie L. Mauldin

Adams Broadwell Joseph & Cardozo

601 Gateway Blvd., Suite 1000

South San Francisco, CA 94080

Telephone: (650) 589-1660

Facsimile: (650) 589-5062

mdjoseph@adamsbroadwell.com

jmauldin@adamsbroadwell.com

Attorneys for the Coalition of  
California Utility Employees

**VERIFICATION**

I, Jamie L. Mauldin, am an attorney of records for the Coalition of California Utility Employees in this proceeding. No officer of CUE is located in this County where I have my office. I am authorized to make this verification on the organization's behalf. I have read this document. The statements in this document are true of my own knowledge, except for those matters which are 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 the 12th day of December, 2012.

\_\_\_\_\_/s/\_\_\_\_\_  
Jamie L. Mauldin, *Attorney for the  
Coalition of California Utility  
Employees*