

**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 IBERDROLA RENEWABLES ON THE SECOND
ASSIGNED COMMISSIONER'S RULING ISSUING
PROCUREMENT REFORM PROPOSALS AND ESTABLISHING A SCHEDULE FOR
COMMENTS ON PROPOSALS**

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**REPLY COMMENTS OF IBERDROLA RENEWABLES ON THE
SECOND ASSIGNED COMMISSIONER’S RULING ISSUING
PROCUREMENT REFORM PROPOSALS AND ESTABLISHING
A SCHEDULE FOR COMMENTS ON PROPOSALS**

Iberdrola Renewables, LLC (“Iberdrola”) offers the following reply comments in response to the Assigned Commissioner’s Ruling (“ACR”) Issuing Procurement reform Proposals. Iberdrola reiterates appreciation for the obvious effort put into this ACR and the highly laudable objectives.

I. INTRODUCTION AND PROCEDURAL RECOMMENDATION

The range and complexity of topics raised in the ACR as well as the varied responses from all the diverse stakeholders illustrate the difficult balance the ACR attempts to achieve between retaining the flexibility needed to reflect commercial realities and creating a stable, transparent and standardized structure so that the rules are clear and regulatory review and debate remain manageable. The tension between these two goals is considerable, and for any given question the Commission is likely to receive numerous different answers. Therefore, at the outset, Iberdrola suggests the Commission might first cull the ACR comments to identify areas

of consensus and act on those areas first, reserving the remaining issues for further vetting in workshops or as appropriate.

Summary of Iberdrola's Comments (in order of appearance)

- Reconsider approach to streamline IOU shortlist approval process
- Agree with making distinction between existing and new RPS facility contracts; however, 5-year threshold may not be necessary for contracts off existing facilities
- RPS Net Short should NOT be used to reject any RPS contract nor required to meet eligibility for any streamlining/SOR provisions
- Caution against overly restrictive criteria to meet streamlining and/or SOR criteria
- Don't discourage bilateral contracts
- Material changes to contracts should result in re-bid
- Consider only pro-rata share of facilities from which multiple contracts are bid

II. REPLY COMMENTS OF IBERDROLA TO SPECIFIC ISSUES RAISED IN INITIAL COMMENTS

Below, Iberdrola replies to initial comments in the ACR, including responses to several of the 30 questions posed therein. The numbering system applied here is consistent with the numbering system used in the ACR.

4. Proposals – Streamline and Increase Transparency of the Commission's RPS Contract Review Process

4.1 Proposal – Standards of Review for IOUs' Shortlists

1. Provide comments on the strengths and weaknesses of increasing the level of review of IOUs' shortlists. If an alternative review process or review standards are proposed, include justification for the proposal.

While Iberdrola supports the concept of expedited approval of executed contracts, Iberdrola does not believe that the proposed shift to a Tier 3 Advice Letter for shortlisted contracts is the right remedy for expediting contracts. As other parties point out, the nature of the commercial process is such that negotiations result in changes to the contract *after* the shortlist is approved. Therefore, Iberdrola does not believe that the end product will result in expedited Commission review—and may well result in further delay--as the impetus will be to analyze the respective contracts as they evolve pursuant to negotiations *post* shortlist approval. Having said this, Iberdrola submits that one way to expedite the contracting process is to require the IOUs to submit final negotiated contracts to the Commission within 30 days of executing the contract. This speeds up the process and helps bids from becoming stale.

4.2 Proposal – Establish Date Certain for Request for Commission Approval of Contracts

2. Discuss the strengths and weaknesses of the proposal to set a time requirement for requesting Commission approval of an RPS contract. What impact will it have on the market, ratepayer, and regulator? If an alternative time requirement is proposed, include a justification for the proposal.

Per the above and initial comments, Iberdrola very much supports a requirement for IOUs to submit an advice letter seeking approval of an executed contract within one month of contract execution. The company remains concerned, however, about the wisdom of a one-year deadline between approval of the shortlist and contract execution. Iberdrola agrees with IEP that, while the proposal to hasten the time between approval of shortlisted contracts and filing of executed contracts with the Commission is laudable, the proposal in the ACR creates an unfair, asymmetric leverage to the detriment of sellers. Iberdrola also agrees with IEP that a better way to shorten the time gap between shortlist approval and filing contracts with the Commission, while keeping the negotiating positions of both parties on a level playing field, is for the

Commission to incent utilities to complete negotiations with shortlisted projects and filing within a 12 month period.

4.3 Proposal – Expedited Review of RPS Purchase and Sales Contracts

Sub-item 3. The above proposal defines expedited review prerequisites differently for contracts ≤ 5 years and those ≥ 5 years in term length. Comment on the appropriateness of the 5-year term length distinction. If an alternative is proposed, include a justification for the proposal.

Iberdrola supports a process differentiation between RPS purchase and sales contracts and those that either involves build/no build decisions or “material” modifications of any contracts. The five-year threshold for requiring competitive solicitations is one workable solution and has been adopted in other states (Oregon and Utah, for example). Contracts of five years or less almost always involve sales of energy and associated products from facilities already in operation. Thus, review of contracts of five years or less rarely requires assessments of project viability, interconnection, and other standards connected with a build/no-build decision for a new renewable generation facility.

Iberdrola posits that the actual distinction should probably be based on the *type* of facility (i.e., existing vs. new) rather than *contract duration*. It is conceivable that a power purchase agreement may be for a term greater than 5 years; it should still be eligible for expedited treatment given the high level of certainty of performance from the asset.

In any case, expedited review of short-term and/or RPS contracts with existing facilities will help reduce regulatory uncertainty associated with these contracts, appropriately acknowledge the position of renewable generation in the state’s loading order and should lead to increased competitiveness and, therefore, lower prices.

Finally, Iberdrola cautions against placing too many conditions on what would qualify a contract for expedited review, lest the option be rendered useless. Iberdrola offers some more detailed thoughts on this matter below in response to other questions.

Sub-item 4. The above proposal allows for contracts that meet all of the prerequisites to be submitted with Tier 1 and Tier 2 Advice Letters for contracts <5 years in term length and contracts ≥5 years in term length, respectively. Comment on the appropriateness of the designated Advice Letter Tier. If an alternative is proposed, include a justification for the proposal.

First and foremost, Iberdrola does not agree with any prerequisite, whether in connection with expediting contracts or Standards of Review (SOR), that limits procurement above the RPS net short calculation. This issue is addressed in more detail in Sub-item 8. Beyond the RPS net short, Iberdrola reiterates the caution against overly-stringent pre-requisites. For example, Iberdrola agrees with SCE—at least in general—that some of the proposed viability screens in Table 1¹ are likely too high to be part of a streamlined review process. The commercial timeframe for development -- including site control, permitting and interconnection status -- are not likely to track the regulatory solicitation process.

Iberdrola also agrees in general with SCE’s proposed modifications to Table 1 relative to “contract price, net market value, and viability reasonableness”² particularly with respect to the recommendation to include a benchmark relating to “the contract’s net market value (being) consistent with current market trends for similar products.” In this rapidly changing and evolving market, there may be situations where an IOU has not conducted a solicitation in the past 12 months for a product that is similar enough to that being proposed to allow for adequate

¹ See Page 13 of ACR

² See SCE comments, p. 17, top section.

comparison. Again, some flexibility necessary to ensure standards of review is workable and encourages market certainty.

Sub-item 5. The above proposals do not apply to sales contracts five years or greater in term length. Is there a market need to extend an expedited approval process to sales contracts five years or greater in term length?

Per discussion in above Sub-item 3 above, Iberdrola suggests expedited review of *all* contracts from already-operating facilities is appropriate, even if the contract length is greater than five years. Project viability and delivery start dates are moot when the procurement is from existing facilities.

4.4 Proposal – Improve RPS Power Purchase Agreement Standards of Review

A. Proposed Standards of Review for Power Purchase Agreements from Solicitations

Sub-item 8. The above proposal requires contracts to be consistent with an IOU's net short approved in the most recent Procurement Plan. Propose how this criterion could be applied to an individual contract.

Iberdrola agrees with IEP, CEERT, CalWEA, UCS and others that no LSE should be limited to contracting for RPS generation in a quantity above the IOU's (or anyone's) calculation of the net short. UCS articulates several excellent reasons why no contract should be rejected for investing in renewables exceeding any calculation of RPS net short.³ Also, as CalWEA aptly notes in its comments,⁴ SB 1X-2 very clearly states that 33% is a *floor* and not a *ceiling*. The intent of the Legislature⁵, as well as the state's loading order, compels the Commission to ensure that RPS procurement is *at least* 33%. Given that there is a near 100% likelihood that any calculation of RPS net short is likely to be wrong given the assumptions that go into such

³ See UCS initial ACR comments pp. 2-5.

⁴ See Cal WEA initial ACR comments, p 6.

⁵ Senate Bill 1X-2, Legislative Counsel's Digest: "This bill would express the intent that the amount of electricity generated per year from eligible renewable energy resources be increased to an amount the equals *at least* 20% of the total electricity sold to retail customers in California per year by December 31, 2013, and 33% by December 31, 2020." (emphasis added)

methodology, it follows that the Commission should not adopt any rules that have the result of excluding or limiting any contracts that may result in procuring above the net short as that could result in procurement of less than 33% which would result in noncompliance with the law and commission orders.

Since the window within which a project is targeted for being added to an IOU portfolio and actual commencement of operations do not always match up, and generation procurement sometimes offers economies of scale that may defy a net-short ceiling, the Commission should avoid overly strict procurement ceilings.

Finally, Iberdrola contends that, as a matter of practicality, retail sellers will not likely acquire above 33% RPS generation unless they find the contract to be in the best interest of ratepayers—for financial and/or reliability reasons. Thus, while the may be able to argue that they are not legally obligated to procure above 33%, the intent of the law is clear that the targets are minimums and the statute itself states “a retail seller may voluntarily increase is procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements.”⁶

B. Proposed Standards of Review for Bilateral Power Purchase Agreements.

First, Iberdrola disagrees with SCE’s conclusion that proposed SOR for bilateral PPAs (nor any other SOR or streamlining conditions) should include any reference to, or limitation connected with, a RPS net short calculation (for reasons outlined above). Iberdrola does agree, however, with SCE that the proposed development milestones for bilateral contracts (also included in eligibility for streamlined review) are overly stringent and may well eliminate bilateral contracting as a viable option. Iberdrola understands that the Commission has a

⁶ Public Utilities Code Section 399.15(b)(3)

preference for competitive solicitations over bilateral contracts. However, the existing process for bilateral contracts already acknowledges this preference by requiring an IOU to clearly explain the justification for choosing a bilateral contract over a solicitation. There are many logical reasons for entering into bilateral contracts, including timing, meeting a need that may not be met by available suppliers or satisfying a particular regulatory obligation. Given that the Commission ultimately approves the contract, there is no reason to preclude bilateral contracts and the associated benefits those contracts may provide to ratepayers.

C. Proposed Standards of Review for Amended Contracts

Iberdrola considers review of changes and modifications to contracts to be among the most important issues to address sooner rather than later in this important RPS reform effort. Iberdrola commends the Commission for moving to clarify the review process for these contracts. Iberdrola asserts, however, that the proposal does not go far enough to ensure a robust market and healthy competition.

Iberdrola recommends that any “material” amendments or modifications to contracts should trigger a requirement to re-bid in a subsequent RFO or parties may bring a revised contract to the Commission for approval as a bilaterally-negotiated agreement.

Clearly the devil is in the details with respect to arriving at consensus on what constitutes a “material” change. At a minimum, Iberdrola suggests that any material change in price or technology equates to automatic cause for re-bidding the contract. Most likely, changes in site control, interconnection point or geographic location of a resource would also constitute a material change. There may be some cases where slight changes involving location or interconnection details can be classified as administrative/non-substantive/not material and, therefore, could legitimately be routed to a Tier 3 process.

Because this has been such a point of contention in the past and because it is likely a subject to inspire many different viewpoints, Iberdrola suggests that this topic may warrant a separate workshop or process to get to a resolution. Clarifying rules around changes/modifications of contracts will eliminate a great deal of uncertainty in the market as well as gaming opportunities (i.e., bidding under one pre-text only to change to another at a later date).

D. Proposed Standards of Review for Power Purchase Agreements that are Beyond the Scope of the Commission's Advice Letter Process.

Sub-item 16. The above proposal proposes that the process by which IOUs must seek Commission approval of RPS contracts be based, in part, on the contracted amount of expected annual generation. Comment on how projects with multiple contracts for total facility capacity and projects with contracts for multiple phases should be treated under the proposal or propose an alternative delineation and justification.

For projects with multiple contracts for total facility capacity, assuming the Commission wants to address a single facility that may sell to multiple parties, Iberdrola suggests the Commission review a contract based on the *pro rata* allocation of output from the facility to the unique buyer which is typically how a contract of this type would be structured.

Respectfully submitted the 12th day of December, 2012.

/s/ Kevin A. Lynch

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VERIFICATION

I, Kevin A. Lynch, am an employee of Iberdrola Renewables LLC, and am authorized to make this verification on its behalf. The matters stated in the foregoing **COMMENTS OF IBERDROLA RENEWABLES ON THE SECOND ASSIGNED COMMISSIONER'S RULING ISSUING PROCUREMENT REFORM PROPOSALS AND ESTABLISHING A SCHEDULE FOR COMMENTS ON PROPOSALS** are true of my own knowledge, except as to matters which are therein 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 to the best of my knowledge.

Executed this 12th day of December 2012, at Portland, Oregon.

/s/ Kevin A. Lynch