

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  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
ON THE SECOND ASSIGNED COMMISSIONER'S RULING  
ON RPS PROCUREMENT REFORM PROPOSALS**

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Reply Comments on the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals issued in this rulemaking on October 5, 2012 ("Second ACR"). These Reply Comments are timely filed and served pursuant to the Second ACR and the Administrative Law Judge's (ALJ's) Ruling sent electronically to the service list in R.11-0-005 on November 5, 2012, extending the due date for these Reply Comments to December 12, 2012.

**I.  
MULTIPLE PARTIES QUESTION WHETHER THE PROPOSED REFORMS  
ACHIEVE THEIR STATED PURPOSE OR, ALTERNATIVELY,  
CREATE UNINTENDED, ADVERSE CONSEQUENCES  
REQUIRING FURTHER ASSESSMENT BY THE COMMISSION.**

The stated intent of the Second ACR is to streamline the RPS contract review process "to be better aligned with the realities of today's renewable energy market."<sup>1</sup> Yet, as stated in CEERT's Opening Comments, the proposed "streamlining" appears targeted instead toward simplifying the Commission's *administration* of the RPS Program; does not account for these

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<sup>1</sup> Second ACR, at p. 4.

“realities,” namely, the dynamic nature of that market; and certainly does not further a broader vision or purpose for renewables procurement.<sup>2</sup>

Thus, the Second ACR’s proposed “standards of review,” although ostensibly targeted to different levels of review depending on transaction type and length, actually have the impact of unnecessarily restricting the amount and type of renewable resources that can be procured in the first place. Instead of focusing on timelines for enhancing timeliness of *Commission* decisions, the reforms place deadlines on party actions that do not account for realistic development timelines and forfeit needed flexibility to complete complex transactions that will result in procurement from viable, cutting-edge technologies that will provide the greatest value to ratepayers in meeting both *current and forecasted* local and system need, consistent with expected load profiles.

In their Opening Comments, these same concerns have been voiced by a wide spectrum of diverse stakeholders – from investor-owned utilities (IOUs) to representatives of utility employees, environmentalists, and developers, as follows:

- Like CEERT, the Union of Concerned Scientists (UCS), the Independent Energy Producers Association (IEP), and Iberdrola Renewables (Iberdrola) object to a “need authorization,” based on the “renewable net short” approved in an IOU’s most recent RPS plan, serving as a condition precedent to, or basis to reject, an RPS contract. As these parties note, this requirement has the effect of creating an inappropriate 33% RPS “ceiling,” not floor, on renewables procurement at odds with State and gubernatorial policy and the Commission’s “Loading Order” of preferred resources, which places renewables as first in order to meet any electric generation need.<sup>3</sup> Further, as UCS points out in its Comments, reliance on the

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<sup>2</sup> CEERT Opening Comments, at p. 2.

<sup>3</sup> UCS Opening Comments, at pp. 2-5; IEP Opening Comments, at p. 8; Iberdrola Opening Comments, at p. 4; CEERT Opening Comments, at pp. 2-3.

“renewable net short” is misplaced for this purpose, in particular, since this calculation is inexact and likely to change.<sup>4</sup>

- Multiple parties, including UCS, IEP, TransWest Express, LLC (TransWest), and Western Power Trading Forum (WPTF), also object to separate standards of review being tied to a single criterion – like overall project size or rate impacts.<sup>5</sup> As UCS points out, such an approach is unnecessary especially when the project’s overall reasonableness will be considered in an advice letter.<sup>6</sup> Further, IEP notes that, especially in combination with the Commission’s decision on the 2012 RPS Plans (Decision (D.) 12-11-016), which failed to provide for regular RPS solicitations or align RPS procurement review with CAISO interconnection procedures, the Commission’s RPS procurement process is on course to “undermine the commercial viability of renewable projects.”<sup>7</sup> This outcome, from IEP’s perspective, requires corrective action to be taken by adopting “reforms” that *will* ensure annual solicitations and bilateral contracting to yield projects with the greatest viability and value to ratepayers.<sup>8</sup>
- In this same vein, the Coalition of California Utility Employees (CCUE) and Tenaska Solar, object to the “rigid” or “mechanistic” nature of the Standards of Review (SORs) that could have the effect of excluding valuable, competitive projects.<sup>9</sup> CCUE contends that such SORs, in fact, create a bias against emerging technologies and fail to consider the value of “diverse attributes,” putting the Commission on course to fast track technologies that will “be out of date in a few years” or fail to respond to changes in load profiles.<sup>10</sup> CCUE, like the Large-Scale Solar Association (LSA) and NextEra Energy Resources, LLC (NextEra), also question how the new “process” reforms will even actually work<sup>11</sup> and why review of resulting contracts should be reduced when, such review, may be the only means to ensure that “too good to be true” contracts will not be approved.<sup>12</sup>

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<sup>4</sup> UCS Opening Comments, at p. 3.

<sup>5</sup> UCS Opening Comments, at pp. 5-6; IEP Opening Comments, at p. 12; TransWest Opening Comments, at pp. 5-7; WPTF Opening Comments, at p. 10.

<sup>6</sup> UCS Opening Comments, at p. 6.

<sup>7</sup> IEP Opening Comments, at pp. 2-3.

<sup>8</sup> *Id.*, at pp. 8-9, 11, 13.

<sup>9</sup> CCUE Opening Comments, at p. 4; Tenaska Solar Opening Comments, at p. 5.

<sup>10</sup> CCUE Opening Comments, at pp. 1-5.

<sup>11</sup> CCUE Opening Comments, at p. 2; LSA Opening Comments, at p. 3; NextEra Opening Comments, at p. 2.

<sup>12</sup> CCUE Opening Comments, at p. 2.

- Similarly, the IOUs, in particular, Southern California Edison Company (SCE), maintain that such inflexible standards of review (SORs), which impose constraints on time, terms, contract or procurement type (e.g., contracts that have been bilaterally negotiated or amended), will not only limit new technologies, but potentially increase costs to ratepayers.<sup>13</sup> In this regard, LSA, BrightSource Energy (BrightSource), and TransWest contend that imposing unnecessary restrictions or viability metrics or creating exclusions from expedited review based on procurement type, timetables, or technologies (not “commercially proven”) will create more risks for suppliers and IOUs and serve as barriers to more efficient, innovative technologies.<sup>14</sup> As examples, LSA states that limitations imposed by these proposals on bilateral contracting, schedules, and operation fail to adequately account for actual development timelines (including circumstances beyond a developer’s control).<sup>15</sup> From TransWest’s perspective, the Commission should be focused on reforms that are coordinated with other jurisdictions and “permit the infrastructure needed to bring the most economic, high quality renewable resources to the State, including those located out-of-state.”<sup>16</sup>
- In addition, SCE, like CEERT, views the proposed “expedited” review for short term contracts as unworkable as the Commission’s current approach.<sup>17</sup> In fact, meaningful change on this reform proposal to actually infuse flexibility into short-term procurement may offer a meaningful bridge for longer term procurement and make best use of existing resources. CEERT, therefore, renews its recommendations in its Opening Comments aimed at facilitating such an outcome.<sup>18</sup>
- Many parties, such as SCE, LSA, and EDF Renewable Energy, Inc. (EDF Renewable), also found “missing” in these reforms a “corresponding commitment” from the Commission and its staff to timely review of shortlists and contracts within specified timeframes.<sup>19</sup> EDF Renewable reasonably suggests that, if this review is reduced to a simple “checklist,” then it

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<sup>13</sup> SCE Opening Comments, at pp. 1-5.

<sup>14</sup> LSA Opening Comments, at pp. 4-7, 10-11; BrightSource Opening Comments, at pp. 3, 10, 16; TransWest Opening Comments, at pp. 2-6.

<sup>15</sup> LSA Opening Comments, at pp. 4-5.

<sup>16</sup> TransWest Opening Comments, at p. 4.

<sup>17</sup> SCE Opening Comments, at pp. 10-18.

<sup>18</sup> CEERT Opening Comments, at pp. 14-16.

<sup>19</sup> SCE Opening Comments, at pp. 3-4; LSA Opening Comments, at p. 2; EDF Renewable Opening Comments, at p. 2.

is incumbent on the Commission to require the IOUs to include a summary table in each advice letter listing all of the “requirements,” how each is met by this procurement, and where that demonstration is included in the advice letter.<sup>20</sup>

This latter suggestion by EDF Renewables not only underscores the rigidity of the proposed rules, but how difficult it is for something as dynamic as renewable development and procurement to fit within an administratively convenient, but not correspondingly appropriate, restrictive list of “requirements.” The Second ACR in fact confirms that the “RPS Market” is “constantly changing,” confirming SDG&E’s assessment in its 2012 RPS Plans: “The market for renewable energy is dynamic; multiple factors can impact project development and SDG&E’s attainment of RPS goals.”<sup>21</sup> Since that is the case, the Commission cannot, simply by adding more rules, make a necessarily complex process simpler nor should those rules be used to foreclose or create higher bars for various transactions that may have the highest value to ratepayers.

In fact, the Commission itself in decisions issued throughout the decade since enactment of the RPS has made clear that evaluation of RPS projects *cannot* be reduced to “quantitative” metrics, but requires “qualitative” considerations (like portfolio fit or resource diversity), judgment, and even “subjective” review “based on informed views of future events and the likelihood of a range of outcomes.”<sup>22</sup> Thus, the Commission has long concluded that the RPS project evaluation and selection process “cannot ultimately be reduced to mathematical models and rules” that eliminate the “reasonable and proper use of judgment by any participant, including IOUs, bidders, parties and the Commission.”<sup>23</sup>

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<sup>20</sup> EDF Renewable Opening Comments, at pp. 2, 6-7.

<sup>21</sup> Second ACR, at p. 10; SDG&E 2012 RPS Plan, at p. 11.

<sup>22</sup> D.08-02-008, at p. 28;

<sup>23</sup> D.06-05-039, at p. 28.

Thus, to impose rigid standards on RPS procurement now would be a significant and unsupported change from this longstanding policy. This is best illustrated by the varying opinions offered on what, or if, “amendments” to contracts can serve to eliminate projects or require them to re-bid into another solicitation. Opinions range from permitting such amendments without such an adverse outcome, especially to avoid limiting new technologies or increasing costs to ratepayers, to identifying what specific amendments should trigger this result. WPTF even asks for stricter SORs to be applied to contract “amendments.”<sup>24</sup>

At this point, it is clear that the Second ACR’s RPS Procurement Reform Proposals require further evaluation by the Commission, especially to ensure that process “streamlining” does not become a recipe for creating rigid, unreasonable, and unworkable barriers to renewable development that will have the highest value to the system and ratepayers. CEERT believes that such further exploration should include a workshop or mediation, facilitated by the Energy Division, to permit the broad spectrum of stakeholders engaged in the renewable market and policy to participate together to reach as much consensus as possible on any needed reforms.

It has been a long time since the Commission has offered an opportunity like this for “procurement” review reforms – dating back to the development of the project viability calculator or RPS compliance templates. However, the Comments filed to date indicate that such an opportunity is particularly appropriate here and should be scheduled soon before any reform is adopted.

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<sup>24</sup> WSPTF Opening Comments, at pp. 7-8.

**II.**  
**THE COMMENTS UNDERSCORE THE NEED FOR A “GENERAL OVERHAUL”  
OF LEAST COST BEST FIT CRITERIA, ESPECIALLY TO ALIGN THAT  
EVALUATION WITH EXPECTED LOCAL AND SYSTEM NEEDS, RENEWABLE  
INTEGRATION, AND EXPECTED CHANGES IN THE DEMAND CURVE.**

In addition to commenting on the Second ACR’s RPS Procurement Reform Proposals, CEERT also focused on the long overdue necessity of aligning RPS procurement with *current* data (i.e., changes in load profiles), planning (i.e., renewables integration and local capacity reliability needs), and policies (i.e., compliance with the “Loading Order” and meeting climate change (Greenhouse Gas (GHG) emission reduction) goals) that are presently defining the Commission’s long term procurement planning (LTPP) process and Resource Adequacy (RA) rules today. CEERT continues to maintain that the Second ACR’s inquiry into RPS Procurement Reform Proposals is now the best time and place to make this much needed connection between LTPP, RA, and RPS proceedings.

The intersection between these current “events” and the RPS is most pronounced in the least cost best fit (LCBF) criteria or evaluation that is conducted by the IOUs in selecting competing RPS projects or bids. At this point, it is not just a matter, as the Second ACR suggests, of achieving compliance with related statutory changes in Senate Bill (SB) 1X 2. In fact, on that issue, the IOUs each claim that its LCBF already complies with that law and, at most, only ask for inclusion of an integration cost adder or effective load carrying capacities (ELCC) for wind or solar to be expeditiously developed in workshop.<sup>25</sup>

However, these few, targeted changes ignore what has been missing for years and is much needed today. Specifically, as stated by the Green Power Institute (GPI), the LCBF process is in need of a “general overhaul,” especially to “improv[e] aspects of the LCBF

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<sup>25</sup> SCE Opening Comments, at pp. 30-34; Pacific Gas and Electric Company (PG&E) Opening Comments, at pp. 24-28.



process,” including, not only time-of-delivery factors and integration costs, but also “benefits of different kinds of renewable generators.”<sup>26</sup> In this regard, the Commission has *not* undertaken any such comprehensive review of LCBF since its initial implementation in 2003, other than the inclusion in later years of consideration of the Transmission Ranking Cost Reports and Project Viability Calculator. However, such an “overhaul” has long been promised and, as detailed in the Opening Comments of both GPI, IEP, Calpine Corporation (Calpine), and the California Wind Energy Association (CalWEA), is needed now more than ever to address increased transparency, “capacity value of intermittents (resource adequacy),” the need for transmission investments, and “a system-wide demand curve whose peak appears to be drifting into later hours of the day.”<sup>27</sup>

Clearly, a full re-evaluation of the LCBF process is needed to ensure that project selection does consider “best fit,” not just lowest cost, resources based on the IOU’s overall system and local energy needs. Given the larger role expected for this “preferred resource” in the Loading Order to meet all utility needs (not just compliance with a 33% RPS Target), criteria defining a utility’s “best fit” should include attributes that have highest value to the utility in terms of grid reliability, resource flexibility, and load profiles

While the legislative amendments in SB 2 (1X) addressed in Section 5.1 of the Second ACR (PU Code §399.14(a)(4)) focus again on “cost” considerations, the “best fit” of a resource that actually matches or adds value to the utility’s local or system need is of equal importance and must be balanced against any cost consideration. Just buying the cheapest energy does not necessarily equate to resource solutions that address a utility’s current or expected short- and long-term local, system, or environmental needs. Again, as CEERT stated in its Opening

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<sup>26</sup> GPI Opening Comments, at p. 2.

<sup>27</sup> GPI Opening Comments, at p. 2; Calpine Opening Comments, at pp. 2-6; CalWEA Opening Comments, at pp. 19-34; IEP Opening Comments, at pp. 14-15.

Comments, to the extent that further work is required, CEERT is prepared to join with other stakeholders to establish these criteria in a public, transparent manner.

### **III. MOST PARTIES SEE CONTINUING MERIT IN THE COMMISSION RETAINING THE “GREEN ATTRIBUTES” STC**

In its Opening Comments, CEERT supported retention of the definition of “green attributes” as a non-modifiable standard term and condition (STC) 2. As stated there, no foundation for proposing elimination of this term, which remains a key part of the understanding between the contracting parties as to the product and rights being transferred, has been offered.

This view is shared and supported by a wide range of parties – including UCS, the IOUs, and GPI.<sup>28</sup> At most, limited revisions may be required to ensure compliance with Assembly Bill (AB) 2196, but, as GPI advises, such changes, for a term that was “painstakingly negotiated,” should be done cautiously and deliberately and certainly should not lead either elimination or change to the non-modifiable status of this STC.<sup>29</sup>

### **IV. CONCLUSION**

Based on its Opening Comments and those of other parties, CEERT renews its request for the Commission to reconsider and give further consideration to its RPS Procurement Reform Proposals, consistent with CEERT’s recommendations. Rather than adopting any of these proposals now, CEERT strongly urges the Commission to schedule a workshop or mediation, facilitated by Energy Division, to bring all affected stakeholders together to address changes, as

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<sup>28</sup> UCS Opening Comments, at pp. 7-10; SCE Opening Comments, at pp. 34-35; PG&E Opening Comments, at p. 29; GPI Opening Comments, at pp. 5-7.

<sup>29</sup> GPI Opening Comments, at p. 5.

necessary, in both procurement review and the LCBF criteria and process with the goal of achieving consensus for any change before its adoption by the Commission.

Respectfully submitted,

December 12, 2012

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## VERIFICATION

### (Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Reply Comments of the Center for Energy Efficiency and Renewable Technologies on the Second ACR on RPS Procurement Reform Proposals, have been prepared and read by me and 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 and executed on December 12, 2012, at San Francisco, California.

Respectfully submitted,

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