

**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 WESTERN POWER TRADING FORUM
ON THE OCTOBER 5, 2012 SECOND ASSIGNED COMMISSIONER'S RULING
ISSUING PROCUREMENT REFORM PROPOSALS**

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December 12, 2012



TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REPLY COMMENTS	2
	A. Section 4.1 Proposal – Standards of Review for IOUs’ Shortlists	2
	B. Section 4.2 Proposal – Establish Date Certain for Request for Commission Approval of Contracts	3
	C. Section 4.3 Proposal – Expedited Review of RPS Purchase and Sales Contracts	3
	D. Section 4.4 Proposal – Improve RPS Power Purchase Agreement Standards of Review	6
	E. Section 4.4.B – Proposed Standards of Review for Bilateral Power Purchase Agreements	6
	F. Section 4.4.C – Proposed Standards of Review for Amended Contracts	8
III.	CONCLUSION.....	9

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The Western Power Trading Forum ("WPTF")¹ hereby submits these reply comments on the October 5, 2012 Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals ("ACR").²

I. INTRODUCTION

WPTF's agrees with Commissioner Ferron and the vast majority of the commenting parties that there is a real need to streamline and expedite the Commission's review process for contracts resulting from the investor-owned utilities' ("IOUs") competitive solicitations for contracts to meet their Renewables Portfolio Standard ("RPS") targets. WPTF therefore supports many of the related proposals set forth in the ACR, subject to certain modifications as discussed in WPTF's opening comments on the ACR and in these reply comments. At the same time, however, WPTF strongly believes that the Commission should generally discourage both

¹ WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

² The ACR provided for reply comments to be filed not later than December 7, 2012. Subsequently, in an email sent to the parties on November 5, 2012, Administrative Law Judge Simon extended the date for reply comments to December 12, 2012. WPTF's reply comments are therefore timely filed.

bilateral contracting and the bilateral amendment or renewal of RPS contracts (i.e., contracts and contract amendments that are not the product of competitive solicitations). These overarching principles guide WPTF’s reply comments on the ACR.³

II. REPLY COMMENTS

A. Section 4.1 Proposal – Standards of Review for IOUs’ Shortlists

While generally supportive of the ACR’s proposal to increase the level of review for the IOUs’ “shortlists” of contracts resulting from their competitive solicitations, WPTF shares the concern several other parties have also raised about the potential for this approach to delay the overall timing of the Commission’s RPS contract review process. WPTF believes that bookending the proposed heightened review process with firm deadlines is necessary to ensure that the intended streamlining of the overall RPS contract review process is achieved—a view shared by, among others, the Independent Energy Producers Association (“IEP”) and NextEra Energy Resources (“NextEra”).⁴ WPTF therefore recommends the Commission adopt a firm schedule for not only the IOUs’ submission of shortlists, but also for the completion of the Commission’s review of submitted shortlists. Specifically, WPTF supports the ACR’s proposal that the IOUs should be required to submit their shortlists within 30 days of the close of bidding, but recommends, as do IEP and NextEra, that the Commission also direct staff to complete the review of the shortlists within 90 days.⁵

³ These reply comments are ordered and labeled in accordance with the issues raised and the corresponding section number in the ACR.

⁴ See, e.g., IEP Opening Comments, pp. 3-4; and NextEra Opening Comments, pp. 2-3.

⁵ WPTF Opening Comments, p. 3; IEP Opening Comments, p. 4; and NextEra Opening Comments, p. 3.

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

WPTF shares the concern expressed by BrightSource Energy (“BrightSource”) that the ACR’s proposed one-year deadline for the execution of contracts after approval of the IOUs’ shortlists could be used by the IOUs as an instrument of bargaining power, such that counterparties are forced to drop otherwise reasonable negotiating positions simply to avoid contract termination.⁶ Indeed, the parties have identified a number of valid reasons why it could require longer than one year to complete negotiations prior to contract execution. WPTF therefore urges the Commission to consider adopting a “soft” deadline of one year for the execution of contracts and, as BrightSource proposes,⁷ require the IOUs to provide an explanation for the reason or reasons, as verified by the Independent Evaluator, why negotiations required more than one year in a particular case.

C. Section 4.3 Proposal – Expedited Review of RPS Purchase and Sales Contracts

While generally supportive of the ACR’s proposals for expediting the review of RPS contracts to the extent such contracts result from competitive solicitations, WPTF shares the concern expressed by some parties about certain proposals. For example, WPTF and several other parties oppose adoption of the proposed prerequisite for expedited review of short-term contracts that the contract delivery start date must be “within 1 year of contract execution” as unnecessary and overly restrictive, and therefore urge the Commission to not adopt this prerequisite.⁸

⁶ See BrightSource Opening Comments, p. 4.

⁷ Id.

⁸ See, e.g., WPTF Opening Comments, p. 4; and PG&E Opening Comments, pp. 8-9.

WPTF also agrees with EDF Renewable Energy, Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”) and other parties commenting that the proposed prerequisite that contracts not contain terms that deviate from the IOUs’ pro forma solicitation contracts is too restrictive and will frustrate use of the expedited review process.⁹ The simple fact is that the IOUs’ pro forma contracts, being simplistic by design, do not typically contain all the provisions that a developer may reasonably require to commit. In fact, as SCE notes in its comments, prior requirements to use pro forma contracts without modification resulted in there being very little if any use of the existing “fast track” process that was intended to increase efficiency.¹⁰ In order to prevent this prerequisite from likewise becoming an unnecessary barrier to use of the proposed expedited review process, while at the same time preserving the ratepayer protections built into the pro forma contracts, WPTF recommends that the Commission adopt EDF Renewable Energy’s proposal,¹¹ as informed by the similar proposals offered by certain other parties,¹² to relax this prerequisite such that contracts that contain modified terms are eligible for expedited review provided that the modified terms do not increase ratepayer risk.

WPTF also supports NextEra’s recommendation to extend eligibility for expedited review to bilaterally negotiated PPAs with a term length of five years or longer, provided that the contracts are for existing resources or resources that will be repowered, and subject to the condition that the contracts meet the price competitiveness, utility need, and viability standards set forth in the ACR’s Table 1.¹³ While generally opposed to measures that would serve to

⁹ See, e.g., EDF Renewable Energy Opening Comments, p. 3; and PG&E Opening Comments, p. 10.

¹⁰ SCE Opening Comments, p. 11.

¹¹ See EDF Renewable Energy Opening Comments, p. 4.

¹² See, e.g., PG&E Opening Comments, p. 11 (alternative proposal to allow “non-material changes” to pro forma contract); and SCE Opening Comments, pp. 13-14.

¹³ See NextEra Opening Comments, p. 4.

encourage bilateral contracting, WPTF is comfortable with expedited review of such contracts in the limited circumstances and subject to the conditions proposed by NextEra, as it would not unduly impact the IOUs' procurement through competitive solicitations that, as the ACR indicates and the Commission has repeated stated,¹⁴ should be the default norm.

In contrast, WPTF strongly opposes the implied recommendation of BrightSource and the Coalition of California Utility Employees ("CUE") to eliminate the proposed prerequisite that contracts "use commercially proven technologies."¹⁵ The all too foreseeable outcome of eliminating this prerequisite would be a bogging down of the "expedited review" process as staff has to contend with a steady flow of proposed contracts for projects with unproven technologies, thereby unnecessarily delaying the processing of contracts for projects with commercially proven technologies and thus delaying when the latter projects commence commercial operation. By their very nature, contracts for projects with unproven technologies are riskier and warrant closer scrutiny than those with proven technologies, and the ACR appropriately provides for such contracts to be reviewed through the application process.

Lastly, WPTF agrees with parties that point out an ostensibly expedited review process will be of dubious value if the Commission does not in fact complete the review of submitted contracts within a reasonable, pre-determined timeframe.¹⁶ Likewise, an expedited review process will be of limited value if it does not in fact release staff resources for reviewing other categories of contracts, which process is likewise intended to be streamlined by the adoption of standards of review. WPTF therefore supports EDF Renewable Energy's proposed "processing

¹⁴ See ACR, p. 21.

¹⁵ See BrightSource Opening Comments, pp. 5-7; CUE Opening Comments, p. 3.

¹⁶ See, e.g., CalWEA Opening Comments, p. 3, and EDF Renewable Energy Opening Comments, p. 5.

time targets” for all categories of contracts that meet the aforesaid requirements and are uncontested by other parties.¹⁷

D. Section 4.4 Proposal – Improve RPS Power Purchase Agreement Standards of Review

WPTF strongly opposes the implied recommendations of PG&E and CUE to eliminate the proposed “commercially proven technologies” element of the standard of review for various categories of contracts covered by the ACR’s Section 4.4 proposals.¹⁸ Similar to the reasons WPTF opposes allowing contracts for projects with unproven technologies to be eligible for expedited review, WPTF is concerned that opening the door to contracts for projects with unproven technologies to be submitted alongside contracts with proven technologies is likely to bog down the staff review process, such that the latter category of contracts are unnecessarily and imprudently held up, leading to a return to the status quo of indeterminably prolonged review times that the ACR’s proposals are intended rectify. As previously stated, unproven technologies are riskier by nature and thus warrant more scrutiny. The Commission should weigh the risks and potential benefits of new technologies through an application process to assure the risks are outweighed by potential ratepayer reward.

E. Section 4.4.B – Proposed Standards of Review for Bilateral Power Purchase Agreements

While not opposed to adoption of the ACR’s proposed standards of review for bilateral contracts, WPTF strongly recommends the Commission should also establish a set of clearly defined and rigorously enforced criteria for the presentation of bilaterally negotiated contracts for review, with the requesting IOU bearing the burden of proof to demonstrate why any given

¹⁷ See EDF Renewable Energy Opening Comments, p. 6.

¹⁸ See PG&E Opening Comments, pp. 11-12; and CUE Opening Comments, pp. 4-5.

situation presented by a bilateral contract and the corresponding need cannot be pursued through a competitive solicitation. WPTF is pleased to note that the Division of Ratepayer Advocates (“DRA”) makes a similar recommendation, and agrees with DRA’s proposal that the required demonstration “must establish facts beyond reasons such as fleeting opportunity, very high viability, and near-term commercial operation date.”¹⁹

By the same token, WPTF is strongly opposed to any and all proposals that would weaken the proposed standards of review or otherwise relax the conditions under which bilateral contracts are acceptable. For example, WPTF opposes San Diego Gas & Electric Company’s (“SDG&E”) recommendation that bilateral contracts that meet the proposed standards of review be eligible for expedited review.²⁰ WPTF sees some merit in SDG&E’s corresponding proposal that “any project seeking a bilateral contract in the future be required to complete the same set of documents that would be required in an RPS solicitation (bid forms, project description forms, etc.) and be evaluated in the same manner as project solicited through an RFO.”²¹ However, the primary shortcoming of SDG&E’s proposed approach is that, even with the documentation SDG&E proposes be required, it would be extremely difficult to determine the cost competitiveness of proposed bilateral contract in the absence of a competitive solicitation. Absent extremely unusual and very compelling circumstances, the Commission should never again expose ratepayers to the risk of paying for bilateral contracts that cannot be directly compared against bids from a reasonably contemporaneous competitive solicitation.

WPTF likewise opposes BrightSource’s recommendation to forego adoption of standards of review for bilateral contracts altogether. By failing to adopt standards and conditions that discourage bilateral contracts, the Commission would leave the door open for developers and

¹⁹ See DRA Opening Comments, p.

²⁰ See SDG&E Opening Comments, p. 10.

²¹ *Id.*, p. 14.

other interested parties to attempt to undercut the rigorous review process and the LCBF screening that such contracts warrant by appealing to legislators and other elected officials to pressure the Commission for a favorable outcome.

WPTF also opposes CalWEA's recommendation that the Commission relax the proposed standards of review such that a bilateral contract that relies on federal incentives would be eligible to be presented for review via the Tier 3 advice letter process.²² The fact that a bilateral contract is reliant on federal incentives should not, by itself, justify the circumvention of the competitive solicitation process. That being said, WPTF would not necessarily oppose consideration of such contracts simply because they were executed outside the competitive solicitation process. Rather, under WPTF and DRA's proposed approach, the requesting utility would simply need to demonstrate why the contract could not have been pursued through a competitive situation, with the expiration of federal incentives before a solicitation could be completed being a possible justification for the Commission to accept the contract for review.

F. Section 4.4.C – Proposed Standards of Review for Amended Contracts

While supportive of the idea that standards of review should be adopted for review of already executed contracts that the IOUs seek to amend, WPTF strongly believes that those standards should be far stricter, and should carry a much higher burden of proof, than those proposed by the ACR.²³ WPTF is thus obviously opposed to any and all proposals that would weaken the ACR's proposed standards. For example, WPTF strongly opposes all of BrightSource's recommendations in this area, as they would essentially gut the standards of review for contract amendments, thereby leaving the door open to the type of "gaming" and "lowballing" that has plagued the RPS solicitation process to date.

²² See CalWEA Opening Comments, p. 8.

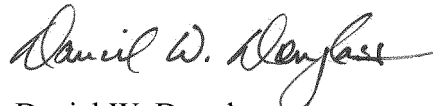
²³ See WPTF Opening Comments, pp. 6-8.

That being said, WPTF recognizes that there may be legitimate reasons for contract amendments, including technical changes in the project's site or its point of interconnection that do not affect the underlying economics or ratepayer risk and therefore should be allowed without the need to request Commission approval through an advice letter or stand-alone application. WPTF is also open to the possibility that certain technology changes could be allowed without the need to subject the contract to a high level of scrutiny. In this regard, WPTF endorses NextEra's recommendation that "the Commission should further explore this complex area and the possibility of distinguishing between major changes that materially impact price, commercial online date, product, or overall cost exposure borne by the utility on the one hand, and minor changes within the same technology class that reflect technological improvements on the other hand."²⁴

III. CONCLUSION

WPTF thanks the Commission for its consideration of these reply comments and urges the Commission to act expeditiously to consider, adopt and implement the ACR's proposals with the modifications and additions discussed herein and in WPTF's opening comments.

Respectfully submitted,



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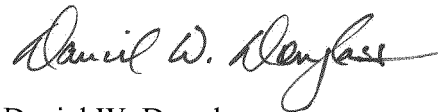
December 12, 2012

²⁴ NextEra Opening Comments, p. 10.

VERIFICATION

I, Daniel Douglass, am counsel for the Western Power Trading Forum and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of Reply Comments of the Western Power Trading Forum to the October 5, 2012 Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals, filed in R.11-05-005, 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.

Executed on December 12, 2012, 2012, at Woodland Hills, California.



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