

**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 CALIFORNIA ENERGY STORAGE ALLIANCE
ON ASSIGNED COMMISSIONER'S RULING ISSUING PROCUREMENT
REFORM PROPOSALS AND ESTABLISHING A SCHEDULE
FOR COMMENTS ON PROPOSALS**

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2nd Avenue
San Diego, California 92103
Telephone: (619) 993-9096
Facsimile: (619) 296-4662
Email: liddell@energyattorney.com

Counsel for the
CALIFORNIA ENERGY STORAGE ALLIANCE

December 12, 2012

**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 CALIFORNIA ENERGY STORAGE ALLIANCE
ON ASSIGNED COMMISSIONER'S RULING ISSUING PROCUREMENT
REFORM PROPOSALS AND ESTABLISHING A SCHEDULE
FOR COMMENTS ON PROPOSALS**

The California Energy Storage Alliance (“CESA”)¹ hereby submits these reply comments on the *Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing Schedule for Comments on Proposals*, issued October 5, 2012 (“ACR”). The ACR provided for comments to be filed by November 15, 2012, but by email message addressed to parties November 5, 2012, Administrative Law Judge Anne E. Simon extended the due date for reply comments to December 12, 2012.

I. INTRODUCTION.

In its Opening Comments, CESA reiterated its proposals that the Commission address the following Renewables Portfolio Standard (“RPS”) issues that should be considered essential to an efficient relationship between reformed administration of RPS procurement and cost-effective

¹ The California Energy Storage Alliance consists of A123 Systems, Beacon Power, Bright Energy Storage Technologies, CALMAC, Chevron Energy Solutions, Deeya Energy, DN Tanks, East Penn Manufacturing Co., Energy Cache, EnerVault, Fluidic Energy, GE Energy Storage, Green Charge Networks, Greensmith Energy Management Systems, Growing Energy Labs, HDR Engineering, Ice Energy, Innovation Core SEI, Kelvin Storage Technologies, LG Chem, LightSail Energy, Panasonic, Primus Power, Prudent Energy, RedFlow Technologies, RES Americas, Saft America, Samsung SDI, Seeo, Sharp Labs of America, Silent Power, SolarCity, Stem, Sumitomo Corporation of America, SunEdison, SunVerge, TAS Energy, UniEnergy Technologies, and Xtreme Power. The views expressed in these Comments are those of CESA, and do not necessarily reflect the views of all of the individual CESA member companies. <http://storagealliance.org>

utilization of energy storage in this proceeding: (a) including the costs and benefits of employing energy storage systems for integration of RPS-eligible projects in RPS procurement; (b) including energy storage system technologies as a design option for RPS-eligible projects in RPS procurement plans, requests for proposals, and bid evaluation factors; and (c) clarifying the definition of ancillary services that should be included in RPS bid evaluation (“CESA’s RPS Proposals”).² CESA respectfully makes this request of the Commission once again.

In addition, CESA takes this opportunity to reply to Opening Comments filed by parties related to treatment of energy storage in the context of amendments to power purchase agreements (“PPAs”) in the course of the RPS contract administration process. Finally, CESA requests that the Commission take official notice in this proceeding of the record in the Energy Storage Rulemaking³ as it relates to the RPS program.

II. THE COMMISSION SHOULD IMMEDIATELY ADDRESS CESA’S PROPOSALS FOR INTEGRATION OF ENERGY STORAGE WITH RPS-ELIGIBLE ENERGY RESOURCES.

CESA submitted in its Opening Comments that its energy storage-related RPS Proposals should be considered by the Commission as they relate to both ACR Section 5.1 - Implementation of New Least-Cost Best-Fit Requirements (ACR, p. 37), and ACR Question Number 28: “What additional topics, if any, should be part of the LCBF process?” (ACR, p. 38). More broadly, CESA respectfully and implicitly, asked in its Opening Comments why a blind

² See, *Comments Of The California Energy Storage Alliance on Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals*, filed November 20, 2012; and see, *Comments of the California Energy Storage Alliance on Decision Conditionally Accepting 2012 Renewables Portfolio Standard Plans and Integrated Resource Plan Off-Year Supplement*, filed October 29, 2012; and *Reply Comments Of The California Energy Storage Alliance on Assigned Commissioner’s Ruling On Renewables Portfolio Standard Procurement Plans And New Proposals* filed July 18, 2012.

³ *Order Instituting Rulemaking Pursuant to Assembly Bill 2514 to Consider the Adoption of Procurement Targets for Viable and Cost-Effective Energy Storage Systems*, R.10-12-007, filed December 16, 2010. (“Energy Storage Rulemaking”).

eye is apparently turned to the *Final Energy Storage Framework Staff Proposal*⁴ introduced into the record in the Energy Storage Rulemaking, which *inter alia* supports the policy position that the RPS Proceeding could help influence treatment of energy storage needs and the Commission should consider and allow incorporating integration cost into RPS offer valuation. No party has filed Opening Comments that are in disagreement with this view, and CESA therefore restates its request here.

III. THE COMMISSION SHOULD TAKE ACCOUNT OF THE IMPORTANT ROLE OF ENERGY STORAGE IN COMMISSION APPROVAL OF RPS-ELIGIBLE POWER PURCHASE AGREEMENT AMENDMENTS.

D.12-11-016⁵ incorrectly describes CESA's RPS Proposals as intended to be addressed by existing guidance included in the ACR: "These issues may also be addressed later in this proceeding as described in the September 12, 2012 Amended Scoping Memo and October 5, 2012 ACR." (pp. 75-76). In fact, neither the September 12, 2012 Amended Scoping Memo nor the ACR address CESA's RPS Proposals. The only reference to energy storage in the ACR is that ". . . any contract amendments or amended and restated contracts that change the project's technology (e.g., solar photovoltaic vs. solar thermal) must be re-bid into the next RPS solicitation. *This also includes major modifications to existing technology that potentially change the economics of the project, such as the incorporation of storage* [Emphasis added]." (ACR, pp. 25-26).

Reactions of the parties to this simple but unhelpful statement in the Opening Comments were mixed. The Division of Ratepayer Advocates, without any discussion, blandly restates the ACR on the point and asserts: "Any contract amendments or amended and restated contracts that

⁴ Attachment A to D.12-08-016, Decision Adopting Proposed Framework for Analyzing Energy Storage Needs, issued August 2, 2012.

⁵ *Decision Conditionally accepting 2012 Renewables Portfolio Standard Plans and Integrated Resource Integration Plan Off-Year Supplement*, issued November 8, 2012.

change the project’s technology must be re-bid into the next RPS solicitation.” (DRA Opening Comments, p.7). San Diego Gas & Electric, supported by a number of parties, brackets the other end of various more reasonable perspectives in opposition: “. . . the ACR proposal should not be adopted. Instead, the Commission should clarify that approval of a contract amendment must be sought only when the modification in question would result in a material decrease in value to utility ratepayers or an increase in cost. All other contract amendments should be reviewed in the ERRA proceeding.” (SDG&E Opening Comments, pp. 16-17).

Balanced positions on treatment of PPA amendments related to addition of energy storage to approved projects are also offered by California Wind Energy Association (“CalWEA”) and the Independent Energy Producers Association (“IEP”): CalWEA states, for example, “. . . solely the addition of storage that improves value, without any of the other enumerated changes to the PPA, should not trigger a mandatory Tier 3 AL requirement.” (CalWEA Opening Comments, p. 13). IEP makes no specific reference to project improvements accomplished by energy storage, stating: “. . . contract amendments that should be considered as significant and subject to additional standards of review (SORs) include (a) significant increases in price; (b) significant changes in size (MW) or deliveries (MWh); (c) significant change in the COD; and (d) significant change in the interconnection point (i.e., different zone, significant increase in forecast interconnection costs).” (IEP Opening Comments, p. 10). Southern California Edison appears generally in accord with these renewable industry trade association perspectives:

“SCE disagrees with the ACR’s requirement that any contract amendment that changes the project’s technology or makes major modifications to the existing technology that potentially change the economics of the project (such as the incorporation of storage) must be re-bid into the next solicitation.²⁹ Forcing projects to bid into the next solicitation rather than amending a contract to accommodate a change in technology may not be appropriate in all situations.

For instance, if there is a unique opportunity to amend an approved power purchase agreement that would result in commensurate customer value, the IOU should have the ability to amend the agreement to the benefit of its customers. The only other alternative in that case would be to leave the contract as is and it would not make sense to prohibit all amendments to a project's technology regardless of the benefit to customers." (SCE Opening Comments, p. 24).

With the sole exception of the DRA, there appears to be a very broad stakeholder consensus in the Opening Comments on the way that energy storage should or should not be subject to Commission oversight in cases where PPA parties are in mutual agreement as to addition of particular applications of energy storage to enhance the value of Commission-approved RPS projects. Generally speaking, where the addition of energy storage increases the value of the renewable electricity generation by firming, shaping, smoothing or shifting output and the resulting increased value is defined within existing accepted commission rules (e.g. More of the generation can be compensated by being subject to a higher time of delivery factor) and/or the developer bears the cost of the addition of the energy storage then such projects should be presumed to be in the interest of ratepayers and not subject to further Commission review. If the request for increased PPA pricing does not meet the above tests, then commission review may be warranted. Thus, subject to further developments in this proceeding and in the Energy Storage Rulemaking, CESA's view on the subject of PPA amendment review requirements at this point is that, on a case-by-case basis, there will be entirely legitimate reasons for PPA amendments related to addition of energy storage that do not significantly affect the underlying economics or ratepayer risk of the PPA and therefore should not require any specific request Commission approval through either an advice letter or a formal application. CESA therefore recommends that the Commission consider addition of specific applications of energy storage that fall within existing compensation rules and that do not negatively alter the fundamental economics of

Commission-approved PPAs to be presumed acceptable without the need to subject the PPAs to any form of advance approval at all.

IV. THE COMMISSION SHOULD TAKE ACCOUNT OF DEVELOPMENTS IN THE ENERGY STORAGE RULEMAKING IN CONSIDERING REFORM MEASURES THAT ARE WITHIN THE SCOPE OF THE ACR.

The Commission is well aware that there is significant overlap in the scope and objectives of this *ratemaking* proceeding and far reaching Commission policy reforms being discussed in the *quasi-legislative* Energy Storage Rulemaking. In fact, a preliminary Energy Division staff report is expected to be published this month that may address many of the points made in these reply comments and the comments of other stakeholders that are parties to both proceedings. Accordingly, consistent with due process, CESA recommends that the Commission should take official notice of the record developed in connection with D.12-11-016 and the ACR to facilitate their consideration in the Energy Storage Rulemaking.

V. CONCLUSION.

CESA thanks the Commission for its consideration of these reply comments.

Respectfully submitted,



Donald C. Liddell
DOUGLASS & LIDDELL

Counsel for the
CALIFORNIA ENERGY STORAGE ALLIANCE

December 12, 2012

VERIFICATION

I, Donald Liddell, am counsel for the California Energy Storage Alliance 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 California Energy Storage Alliance on Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on 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.



Donald C. Liddell
DOUGLASS & LIDDELL

Counsel for the
CALIFORNIA ENERGY STORAGE ALLIANCE