

**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 WIND
ENERGY ASSOCIATION ON DRAFT 2013 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS**

July 22, 2013

Nancy Rader
Executive Director
California Wind Energy Association
2560 Ninth Street, Suite 213A
Berkeley, California 94710
Telephone: (510) 845-5077
Email: nrader@calwea.org

**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 WIND
ENERGY ASSOCIATION ON DRAFT 2013 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS**

I. INTRODUCTION

Pursuant to the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure, the *Assigned Commissioner’s Ruling Identifying Issues and Schedule of Review for 2013 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on a New Proposal* (“ACR”), and the May 23, 2013, email from Administrative Law Judge DeAngelis revising the schedule for this proceeding, the California Wind Energy Association (“CalWEA”) respectfully submits these reply comments on the investor-owned utilities’ (“IOU”) draft 2013 Renewables Portfolio Standard (“RPS”) Procurement Plans (the “2013 Plans”).

CalWEA has reviewed the opening comments on the 2013 Plans and the proposal set forth in the ACR to establish a two-year RPS procurement authorization. Based on this review, CalWEA recommends that the Commission should:

1. Reject Pacific Gas and Electric Company’s (“PG&E”) proposal to be permitted to revise bid evaluation criteria and revise its pro forma power purchase agreement (“PPA”)

without Commission review and clarify that the IOUs must submit the off-year RPS procurement plan updates via Tier 3 Advice Letter;

2. Reject PG&E’s proposal to deviate from the Commission-approved adjusted net market value calculation by applying its Portfolio Adjusted Value (“PAV”) methodology in its least-cost, best-fit (“LCBF”) bid evaluation;

3. If the Commission eliminates the simultaneous solicitation requirement, the Commission should eliminate the current exclusivity requirement for shortlisted bidders; and

4. Confirm that any RPS compliance delay claim based on inadequate transmission capacity must also consider applicable operational protocols and available operational measures.

Each of these recommendations is addressed in greater detail below.

II. DISCUSSION

A. The Commission Should Reject PG&E’s Proposal To Be Permitted To Revise Its Bid Evaluation Criteria And Pro Forma PPA Without Commission Review And Clarify That The IOUs Must Submit The Off-Year RPS Procurement Plan Updates Via Tier 3 Advice Letter

The ACR included a proposal to establish a two-year RPS procurement authorization, in which a supplemental RPS procurement plan could be filed by Tier 2 Advice Letter in the second or “off-year” of the two-year cycle.¹ In its opening comments, PG&E expressed its support for the proposal in the ACR, and further proposed that changes in its bid evaluation criteria and revisions to its pro forma RPS PPA should be permitted under the Tier 2 Advice Letter filing process without triggering a requirement for a Tier 3 Advice Letter filing.² In contrast, the Large-scale Solar Association (“LSA”) notes in its opening comments that “[o]ff-year filings

¹ ACR at 24-27.

² PG&E Opening Comments at 3-6.

should include a requirement that any changes to the solicitation materials or pro forma PPA be identified” and “properly vetted and reviewed in an open and public process.”³

CalWEA supports LSA’s call for ensuring that changes in solicitation materials and the pro forma RPS PPAs are subject to open and public processes. Maintaining a public process ensures that interested stakeholders are afforded the opportunity to review and comment on the revisions and provides the Commission with a more balanced set of viewpoints to consider in its own review of the proposed revisions.

CalWEA further notes that PG&E’s proposal is inconsistent with the Commission’s statutory obligation to review and approve RPS procurement plans.⁴ Accordingly, the Commission should reject PG&E’s proposal to be allowed to revise bid evaluation criteria and revise its pro forma RPS PPA without Commission review.

In addition, if the ACR proposal for a two-year RPS procurement authorization is adopted, the Commission should clarify that the supplemental RPS procurement plan must be filed by Tier 3 Advice Letter. As the Center for Energy Efficiency and Renewable Technology (“CEERT”) notes in its opening comments, the Commission has a statutory obligation to review and approve the IOUs’ RPS procurement plans.⁵ The Tier 2 Advice Letter filing process proposed in the ACR for the “off-year” supplemental RPS procurement plan would permit staff disposition of the RPS procurement plan for that “off-year.” Because the Commission has a statutory obligation to review and approve the RPS procurement plans, this Tier 2 Advice Letter process would not be consistent with the Commission’s statutory obligations. Accordingly, the Commission should clarify that the supplemental RPS procurement plan must be filed by Tier 3 Advice Letter.

³ LSA Opening Comments at 3.

⁴ Cal. Pub. Util. Code § 399.13; *see also*, CalWEA Opening Comments at 3-4.

⁵ CEERT Opening Comments at 17 (citing Cal. Pub. Util. Code § 399.13).

B. The Commission Should Reject PG&E’s Proposal To Deviate From The Commission-Approved Adjusted Net Market Value Calculation By Applying Its PAV Methodology In Its LCBF Bid Evaluation

In its opening comments on the 2013 Plans, The Utility Reform Network (“TURN”) “urges the Commission to reject PG&E’s use of the delivery term adder in its PAV methodology for the 2013 solicitation.”⁶ CalWEA urges the Commission to go a step further and reject PG&E’s proposal to apply its PAV methodology in its entirety.

PG&E first proposed to apply its PAV methodology in its 2012 RPS procurement plan.⁷ CalWEA objected to PG&E’s proposal at that time, explaining in detail the manner in which the PAV duplicated components of the Commission-approved adjusted net market value calculation and applied arbitrary quantitative bid scoring adjustments that degraded the benefits of the Commission-approved adjusted net market value calculation.⁸ CalWEA’s explanation included, as an example, PG&E’s proposal to apply adjustments ranging from -10 to +10 dollars per MWh based on the contract term length to reflect PG&E’s preference for shorter contracts.⁹ In its decision approving the 2012 RPS procurement plans, the Commission noted CalWEA’s concerns, but concluded that the use of PG&E’s PAV should be accepted for the 2012 solicitation, but made “no finding on the adequacy of the Portfolio-Adjusted Value for use beyond PG&E’s 2012 solicitation.”¹⁰

TURN’s opening comments demonstrate that the concerns expressed by CalWEA in the 2012 RPS procurement plan proceeding were well-founded. TURN explains that it is a member of PG&E’s Procurement Review Group, and in that role it has reviewed PG&E’s application of

⁶ TURN Opening Comments at 7.

⁷ D. 12-11-016 at 45.

⁸ See e.g., Reply Comments of the California Wind Energy Association on Proposed Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans (November 5, 2012), R. 11-05-005, at 5.

⁹ *Id.*

¹⁰ D. 12-11-016 at 46.

the PAV to the 2012 RPS solicitation.¹¹ TURN further describes how it was “alarmed” by the impact PG&E’s delivery term adjustment had on bid ranking, which added “arbitrarily favored 10 to 15 year contracts” while creating a “practically impossible hurdle for any offer with a 25 year term.”¹² This is the precise outcome that concerned CalWEA in response to the 2012 RPS procurement plans.

Given TURN’s confirmation that the PAV arbitrarily skewed quantitative bid rankings in the 2012 RPS solicitation, the Commission should reject PG&E’s proposal to apply its PAV methodology for the 2013 RPS solicitation. Instead, the Commission should require PG&E to use the Commission-approved adjusted net market value calculation as do Southern California Edison Company (“SCE”) and San Diego gas & Electric Company (“SDG&E”).

C. If The Commission Eliminates The Simultaneous Solicitation Requirement, The Commission Should Eliminate The Current Exclusivity Requirement For Shortlisted Bidders

In connection with its proposal to establish a two-year RPS procurement authorization, the ACR explained that it was not proposing any change to the Commission’s practice of requiring simultaneous RPS procurement solicitations.¹³ However, PG&E proposes in its opening comments that the Commission should “reconsider the requirement that all IOUs conduct their solicitations on the same timeline.”¹⁴ Similarly, SCE argues that “the Commission should not require that the IOUs conduct simultaneous RPS solicitations.”¹⁵ Likewise, SDG&E states that “the Commission should modify its current approach of requiring the IOUs to hold simultaneous RPS solicitations.”¹⁶

¹¹ TURN Opening Comments at 7.

¹² *Id.*

¹³ ACR at 25.

¹⁴ PG&E Opening Comments at 4.

¹⁵ SCE Opening Comments at 2.

¹⁶ SDG&E Opening Comments at 2.

The Commission's current practice of requiring simultaneous RPS procurement solicitations provides benefits to the market. As the ACR notes, simultaneous solicitations "promote regulatory and administrative efficiency."¹⁷ In addition, simultaneous solicitations increase the overall competitiveness of the process by increasing the number of buyers participating in the market at that time. If, however, the Commission intends to entertain the elimination of the simultaneous solicitation requirement, then, at a minimum, the Commission must eliminate the current requirement for shortlisted bidders to enter into an exclusive relationship with the IOU by whom they were shortlisted.¹⁸

In Decision 04-07-029, the Commission adopted the current solicitation process whereby bidders are allowed to bid into multiple solicitations, which are held simultaneously, provided that the IOUs can request that the bidder grant the applicable IOU exclusive negotiating rights within five days after being shortlisted, and the applicable IOU can cease negotiating with any bidder that refuses to provide such exclusive rights.¹⁹ The Commission determined that "[t]his approach provides a reasonable balance between bidder interests in submitting multiple bids and utility interests in having binding bids before proceeding to negotiations."²⁰ However, if the simultaneous solicitation is eliminated, but the exclusivity requirement retained, then the balance would be lost because a bidder's "interests in submitting multiple bids" would no longer be preserved. Instead, the bidder would have to forego the opportunity to bid in subsequent

¹⁷ ACR at 25.

¹⁸ Note that CalWEA's opening comments argue that, even if the current simultaneous solicitation requirement remains in place, the Commission should eliminate the requirement for shortlisted bidders to grant exclusive negotiating rights because all of the IOUs propose to reconsider offers from shortlisted bidders during, or at the end of, the negotiation process. CalWEA Opening Comments at 14-15. To the extent that the current practice of requiring simultaneous solicitations is discontinued, however, the need to eliminate the current bidder exclusivity requirement becomes even more pronounced.

¹⁹ D. 04-07-029 at 8.

²⁰ *Id.*

solicitations issued by the other IOUs in order to negotiate with the IOU issuing the first solicitation. This reduces overall participation in the solicitations, which reduces competition.

Accordingly, if the Commission intends to entertain the elimination of the simultaneous solicitation requirement, then, at a minimum, the Commission must eliminate the current requirement for shortlisted bidders to enter into an exclusive relationship with the IOU by whom they were shortlisted.

D. The Commission Should Confirm That Any RPS Compliance Delay Claim Based On Inadequate Transmission Capacity Must Also Consider Applicable Operational Protocols And Available Operational Measures

In its opening comments, in response to the IOUs' raising the specter of a lack of sufficient transmission infrastructure as a significant impediment to reaching the State's renewable energy targets, CEERT argues that the impact of the Commission's recent decision relating to Segment 8A of the Tehachapi Renewable Transmission Project ("TRTP"), Decision 13-07-018, "most certainly must be considered in assessing RPS compliance delays and risks in this proceeding."²¹ Setting aside any adverse impacts that decision may have on developers that relied on the Commission's original approval of Segment 8A, the factors to be considered by the Commission in assessing RPS compliance delays have already been determined by the Legislature. In fact, the Commission has previously described the applicable statutes as being "reasonably detailed about what events may justify a waiver of enforcement of the procurement quantity requirements"²² Based on the applicable statutes, the Commission should confirm that any RPS compliance delay claim based on inadequate transmission capacity must also consider applicable operational protocols and available operational measures.

²¹ CEERT Opening Comments at 9.

²² D. 12-06-038 at 79.

California Public Utilities Code Section 399.15(b)(5)(A) allows the Commission to waive enforcement of the statutory RPS procurement requirements if it finds that there is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the California Independent System Operator Corporation (“CAISO”) after considering whether the IOU has taken all reasonable operational measures to maximize cost-effective deliveries of electricity from eligible renewable energy resources in advance of transmission availability. As CalWEA has previously explained in this proceeding, proper application of this statute requires consideration of the interconnection status of the projects in the IOU’s portfolio (energy-only or full capacity), the extent to which the IOU has considered allowing projects with full capacity interconnection requests to commence deliveries under the PPA prior to attaining full capacity deliverability status (as defined in the CAISO tariff), as well as the extent to which the IOU has worked with project developers to enable projects in the IOU’s portfolio to interconnect early on a “limited operation” basis pursuant to a limited operation study requested pursuant to the project’s interconnection agreement.²³

In the TRTP Segment 8A context, a delay in the completion date for Segment 8A does not equate to inadequate transmission capacity for purposes of California Public Utilities Code Section 399.15(b)(5)(A). Instead, the statute requires that a shortfall be based on inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the CAISO, after taking into account all reasonable operational measures to maximize energy deliveries. Thus, an IOU affected by the Segment 8A delay would be required to show that it could not mitigate the

²³ See e.g., Comments of the California Wind Energy Association on Reporting and Compliance Requirements for the Renewables Portfolio Standard Program (February 10, 2012), R. 11-05-055, at 3-4.

effect of the Segment 8A delay by allowing projects to interconnect on a limited basis through limited operations plans, or interconnecting prior to completion of all network upgrades required to attain full capacity deliverability status (as defined in the CAISO tariff).

Given the express requirements of the statute, the Commission should confirm that any RPS compliance delay claim based on inadequate transmission capacity must also consider applicable operational protocols and available operational measures.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,



Nancy Rader
Executive Director
California Wind Energy Association
2560 Ninth Street, Suite 213A
Berkeley, California 94710
Telephone: (510) 845-5077
Email: nrader@calwea.org

July 22, 2013

VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I 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 Wind Energy Association on Draft 2013 Renewables Portfolio Standard Procurement Plans* are true of my own knowledge, except as to the 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.

Executed on July 22, 2013 at Berkeley, California.



Nancy Rader

Executive Director, California Wind Energy Association