

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 DIVISION OF RATEPAYER ADVOCATES
ON RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS
AND ASSIGNED COMMISSIONER'S RULING
ON THE STAFF'S PROPOSAL**

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I. INTRODUCTION

Pursuant to the May 10, 2013 *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 Administrative Law Judge (ALJ) Regina DeAngelis's May 23, 2013 e-mail granting the extension of time to file Proposed 2013 Renewable Portfolio Standard (RPS) Procurement Plans and subsequent comments, the Division of Ratepayer Advocates (DRA) respectfully submits the following reply comments to parties' opening comments on the proposed 2013 Renewables Portfolio Standard Procurement Plans and ACR biennial procurement authorization proposal.

II. SUMMARY OF DRA'S RECOMMENDATIONS

A. The Investor Owned Utilities' 2013 RPS Procurement Plans

The Commission should adopt three specific recommendations made by parties in opening comments relating to the investor owned utilities' (IOUs) 2013 RPS Procurement Plans. First, the Center for Energy Efficiency and Renewable Technologies (CEERT) requested an opportunity for public vetting, such as a public workshop, to address the reasonableness of success rates calculated by IOUs for approved projects that have not yet begun delivery of energy.¹ DRA supports this request. The forecasting methodology and assumptions of each IOU appear to vary wildly. The disparities make it impossible to compare the success rates across IOUs. Understanding each IOU's success rate calculations in a public forum will help the Commission and interested parties compare the success rates across IOUs. Second, DRA supports the Union of Concerned Scientists' (UCS) recommendation that the Commission adopt a Minimum Margin of Over-procurement (MMOP) for each IOU;² however, as DRA noted in

¹ Comments of the Center for Energy Efficiency and Renewable Technologies on IOU 2013 RPS Plans and ACR New Proposal (CEERT Opening Comments), pp. 7-8.

² Opening Comments of the Union of Concerned Scientists on 2013 Renewable Energy Procurement Plans (UCS Opening Comments), pp. 2-5.

opening comments, the MMOP should only be used when needed.³ DRA recognizes that project failure rates have declined and that the IOUs are projected to have excess procurement over the next several years. That notwithstanding, a Commission-established MMOP will help minimize the risks of IOU non-compliance or over-procurement in the future. Finally, DRA agrees with Pacific Gas & Electric Company (PG&E), Calpine, the Independent Energy Producers (IEP), CEERT, and the Large-Scale Solar Association (LSA)⁴ that the Commission should act in a timely fashion to facilitate a reasonable, publicly developed, renewable integration adder. A renewable integration adder will provide greater certainty in the renewables market and enhance the ability of the least-cost best fit (LCBF) methodology to identify projects with the greatest value to ratepayers.

B. The ACR's Biennial Procurement Authorization Proposal

DRA supports the objectives of the ACR's biennial proposal, presumably to streamline the RPS procurement process and reduce administrative burdens and expenses. Several parties, however, have raised concerns about aspects of the proposal, including: (1) inconsistency with certain RPS statutory requirements; (2) lack of transparency; and (3) uncertain effectiveness and consequences of the proposal. DRA addresses these concerns below and recommends that the Commission:

- Ensure that the statutory requirement to consider “mechanisms for price adjustments associated with the cost of key components for eligible renewable energy resource projects with online dates more than 24 months after the date of contract execution...”⁵ is addressed. This requirement is not clearly addressed in the proposal;

³ Comments of the Division of Ratepayer Advocates on Renewables Portfolio Standard Procurement Plans, pp. 11, 14.

⁴ See Comments of Calpine Corporation on 2013 Proposed Renewables Portfolio Standard Procurement Plans (Calpine Opening Comments), pp. 2-3; Comments of the Independent Energy Producers Association on the RPS Procurement Plans (IEP Opening Comments), pp. 1-3; CEERT Opening Comments, pp. 10-13; and Comments of the Large-Scale Solar Association on the May 10th Assigned Commissioner's Ruling and the 2013 Renewables Portfolio Standard Procurement Plans (LSA Opening Comments), pp. 5-6.

⁵ (PU Code § 399.13(a)(5)(E)).

- Post the Supplemental Procurement Plans and any protests to advice letters on the Commission’s website in order to provide an appropriate level of public transparency; and
- Establish a review process to assess the effectiveness of the ACR’s biennial procurement authorization proposal.

III. DISCUSSION OF THE ACR’S BIENNIAL PROCUREMENT AUTHORIZATION PROPOSAL

A. The ACR’s biennial procurement proposal appears to be consistent with the RPS statute, except for the requirement to consider mechanisms for price adjustments associated with delayed projects

CEERT asserts that the ACR’s biennial procurement authorization proposal is not consistent with the RPS statutory requirement for “commission” review and adoption of annual plans.⁶ Public Utilities (PU) Code Section 399.13(a)(1) provides in relevant part:

The commission shall direct each electrical corporation to annually prepare a renewable energy procurement plan that includes the matter in paragraph (5) [setting forth what must be included in the renewable energy procurement plans], to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process

First, CEERT argues that the statute requires that the Commissioners, as opposed to division staff, review and approve annual RPS Procurement Plans.⁷ The ACR

⁶ CEERT Opening Comments, pp. 17-18.

⁷ Specifically, CEERT argues that “the use of a “Tier 2” advice letter process does not guarantee review and approval by the *Commission*, as required by statute, but, instead, permits that review and approval to be conducted by staff. There is nothing in the statutory language of Section 399.13 that permits this delegation of duty by the Commission . . . Any mechanism that is used . . . can only be authorized if it ensures . . . annual *Commission* review and approval of a plan” (CEERT Opening Comments, pp. 17-18, emphasis in original.)

proposal would require IOUs to file, via Tier 2 advice letters, Supplemental RPS Plans in each off-year of the biennial cycle.⁸ According to CEERT,

[T]he use of a ‘Tier 2’ advice letter process does not guarantee review and approval by the *Commission*, as required by statute, but, instead, permits that review and approval to be conducted by staff. There is nothing in the statutory language of Section 399.13 that permits this delegation of duty by the Commission.⁹

DRA disagrees with CEERT’s interpretation of the statute. Even if the RPS statute is interpreted to require review and approval by the Commissioners, it also provides flexibility in Commission oversight of the program. Specifically, the statute qualifies that review and adoption of the plans by the “commission” is only required “[t]o the extent feasible”¹⁰ This language provides the Commission discretion to determine that an alternative approach is more feasible (i.e. practicable). Here, the intent of the ACR proposal appears to be to streamline the procurement plan process and focus resources where they are most needed: on a Commission review of plans in year one to ensure compliance with California’s requirements and policies governing renewable procurement, and a staff review in year two to ensure the updated plans are consistent

⁸ Pursuant to pages 26-27 of the ACR, the IOUs’ Supplemental Procurement Plans shall include:

1. Update for portfolio optimization strategy;
2. Explanation of why or why not it intends to hold a solicitation and narrative that supports the IOU’s decision;
3. Update to RPS Net Short;
4. Update to buy/sell authorization amount;
5. Reporting of any significant events (e.g., significant change in retail sales forecast, larger than normal contract termination, new or modified rules that affect procurement practices, etc.) such that they alter planned procurement that was previously approved; and
6. Update to solicitation materials, if needed.

⁹ CEERT Opening Comments, p. 17, emphasis in original.

¹⁰ PU Code Section 399.13(a)(1).

with the Commission’s determinations in year one. The Commission has discretion to delegate the off-year review and approval to staff via a Tier 2 advice letter process as a more feasible alternative to the existing process. Moreover, the ACR proposal allows for an elevated review (e.g., Tier 3 Advice Letter) if needed; for example, to ensure compliance with Commission decisions (e.g., LCBF).¹¹

Second, CEERT argues that the off-year Supplemental RPS Procurement Plans need “far greater detail” to satisfy the statute.¹² CEERT cites the relevant portions, PU Code Sections 399.13(a)(1) and 399.13(a)(5), of the RPS statute.¹³ DRA disagrees that the off-year plans require “far greater” detail to satisfy these provisions. Section 399.13(a)(5) sets forth specific content requirements for RPS Procurement Plans. While the ACR does not use identical language, it appears the biennial proposal attempts to satisfy these requirements.¹⁴ One particular statutory requirement may be missing from the proposal, however. Specifically, the requirement to include “[c]onsideration of mechanisms for price adjustments associated with the costs of key components for eligible renewable energy resource projects with online dates more than 24 months after the date of contract execution . . .”¹⁵ is not clearly addressed in the proposal. In the interest of ensuring compliance with all statutory provisions, DRA recommends the Commission explicitly identify how the proposal meets each of the six requirements in section 399.13(a)(5).

In summary, CEERT has not shown that the ACR proposal is inconsistent with the RPS statutory requirements, with the exception of the single missing requirement discussed above. However, CEERT and other parties raised other concerns with the

¹¹ ACR, p. 27.

¹² “The ‘Supplemental RPS Procurement Plan’ required by the May 10 ACR in the ‘off-year’ of the two-year procurement authorization does not satisfy the Commission’s obligation under Public Utilities (PU) Code §399.13 to require the IOUs’ to ‘annually’ prepare renewable energy procurement plans in far greater detail than is proposed for the ‘Supplemental RPS Procurement Plan.’” (CEERT Opening Comments, p. 17).

¹³ Id.

¹⁴ ACR, pp. 26-27.

¹⁵ (PU Code Section 399.13(a)(5)(E)).

ACR proposal that should be addressed by the Commission. These other concerns are discussed next.

B. Procurement plans and protests to any plans should be posted on the Commission’s website in order to provide an appropriate level of public transparency

CEERT expressed a concern regarding public transparency with the use of an advice letter process to manage the Supplemental RPS Procurement Plans.¹⁶

Specifically, CEERT stated:

[The] use of the informal, but relatively opaque, advice letter process for authorization of the second year – may not be sufficiently open and transparent to support certainty and confidence in the process.¹⁷

DRA shares this concern, as advice letters are not easily accessible to the public.¹⁸ Thus, DRA recommends that if the Commission adopts the ACR proposal, the Commission should post on its website the Supplemental RPS Procurement Plans and protests to any Supplemental RPS Procurement Plans, in order to provide an adequate level of public transparency. Posting the advice letters on the Commission’s RPS website¹⁹ will allow any member of the public to have ready access to the most recent procurement plans without having to sign up for the relevant service list or know the number of the advice letter.

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¹⁶ CEERT Opening Comments, p. 15.

¹⁷ Id.

¹⁸ There are two primary ways to gain access to advice letters. The first is the proceeding service list; however the vast majority of the public is not currently on the RPS service list. The second is with knowledge of the advice letter title; however there is no established resource for discovering those titles aside from transmissions to the service list. The result is to effectively exclude the vast majority of the public from access to advice letters.

¹⁹ <http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm>

C. The Commission should explicitly establish a review process in order to assess the effectiveness of the ACR's biennial procurement authorization proposal

The IOUs as well as other parties expressed a wide range of concerns with the ACR proposal.²⁰ While most parties generally support the proposal, they also highlight perceived weaknesses in the proposal. For example, PG&E states:

Notwithstanding its general support for the Proposal, PG&E is concerned that unless the IOUs are permitted to make updates to their bid solicitation materials that reflect the inevitable market and regulatory changes that take place within a year without triggering a more lengthy review process, the Supplemental RPS Plan may fail to provide any new streamlining or efficiency benefits.²¹

LSA requests an opportunity for the Commission and stakeholders to ensure that any changes in off-years to an IOU's LCBF methodology or *pro forma* Power Purchase Agreement (PPA) are vetted and reviewed in an open and public process.²²

Several parties also question the practicality and utility of the proposal.²³ For example, Green Power Institute (GPI) is concerned that the proposal may not save time for the Commission or parties because the requirements are essentially equivalent between the Year One RPS Procurement Plan and Year Two Supplemental RPS Procurement Plan.²⁴ Tenaska Solar Ventures raises similar concerns that the proposal will not, in fact, dramatically reduce the effort required on the part of the utilities.²⁵ GPI

²⁰ See e.g., Comments of the Green Power Institute on the 2013 RPS Procurement Plans (GPI Opening Comments), pp. 8-9; SCE Company's Comments on New Proposal Related to RPS Procurement Plans (SCE Opening Comments), p. 4; PG&E's Comments on RPS Plans and Two-Year Procurement Authorization Proposal (PG&E Opening Comments), p. 3; Comments of the Large-Scale Solar Association on the May 10th Assigned Commissioner's Ruling and the 2013 RPS Procurement Plans (LSA Opening Comments), p. 3; and Comments of Tenaska Solar Ventures on the Assigned Commissioner's May 10 Ruling Identifying Issues and Schedule of Review for 2013 RPS Procurement Plans (TSV Opening Comments), pp. 8-10.

²¹ PG&E Opening Comments, p. 3.

²² LSA Opening Comments, p. 3.

²³ See TSV Opening Comments, pp. 8-10; GPI Opening Comments, pp. 8-9; and SCE Opening Comments, p. 4.

²⁴ GPI Opening Comments, p. 8.

²⁵ TSV Opening Comments, p. 10.

asserts that the planning process is not sufficiently mature to justify moving to a two-year planning cycle.²⁶

The Commission should take note of these concerns and recognize that the ACR's biennial proposal is new and untested. To address the concerns raised by parties regarding the effectiveness of the proposal, DRA recommends that the Commission provide an opportunity for parties and the Commission to evaluate and address the efficacy of the proposal. Specifically, as part of the annual RPS Procurement Plan ACR, the Commission should invite parties to assess the effectiveness of the proposal and to recommend appropriate changes, if warranted, after the first cycle of the Year One RPS Procurement Plan and the Supplemental Procurement Plan. At a minimum, the ACR should include, and/or address, the following questions:

- Did the information submitted by the IOUs satisfy the six requirements²⁷ for the Supplemental Procurement Plans?
- Did parties have sufficient opportunity to address the issues and information provided in the Supplemental Procurement Plans?
- Did the Supplemental Procurement Plans raise any policy issues that should be addressed in the RPS proceeding (or other relevant proceeding) or by another agency?
- Was the preparation and review process of the Supplemental Procurement Plan streamlined effectively as intended by the ACR proposal?

IV. CONCLUSION

DRA respectfully urges the Commission to adopt the recommendations submitted by DRA in its opening comments and in these reply comments.

²⁶ GPI Opening Comments, p. 9.

²⁷ See *supra*, footnote 8.

Respectfully submitted,

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July 22, 2013

VERIFICATION

I, Matt Miley, am counsel of record for the Division of Ratepayer Advocates in proceeding R.11-05-005, and am authorized to make this verification on the organization's behalf. I have read the

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER
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filed on July 22, 2013. I am informed and believe, and on that ground allege, that the matters stated in this document are true. I declare under penalty of perjury that the foregoing are true and correct.

Executed on July 22, 2013 at San Francisco, California.

/s/ MATT MILEY

Matt Miley
Staff Counsel