

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)

**COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES
ON THE ADMINISTRATIVE LAW JUDGE'S RULING ISSUING STAFF
PROCUREMENT REFORM PROPOSAL**

IRYNA A. KWASNY
Attorney for the Office of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Tel. (415) 703-1477
Fax: (415) 703-2262
Email: iryna.kwasny@cpuc.ca.gov

COLIN RIZZO
ZHEN ZHANG
Analysts for the Office of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Tel: (415) 703-1784
Email: colin.rizzo@cpuc.ca.gov

May 7, 2014

I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) submits these comments in response to the April 8, 2014 *Administrative Law Judge's Ruling (1) Issuing Staff Proposal to Reform Procurement Review Process for the Renewables Portfolio Standard Program; (2) Setting Comment Dates; and (3) Entering Staff Proposal into the Record* (ALJ Ruling). Energy Division Staff proposal is in Attachment 1 of the ALJ Ruling (Staff Proposal).

The purpose of the proposal is to improve the California Public Utilities Commission's (Commission) renewables portfolio standard (RPS) program's procurement review process by streamlining the RPS contract review process; making the Commission's RPS procurement review more transparent; establishing clear standards for the review process; and issuing determinations on contract reasonableness on a defined timeline.¹ ORA generally supports the Staff Proposal and offers the following recommendations:

- The Commission should adopt the Staff proposal to develop a methodology that establishes the threshold cutoff of the shortlist, using the net market value (NMV) as a basis.
- The Commission should exclude projects from the shortlist that do not meet the NMV threshold cutoff.
- The Commission should adopt the proposed requirement that the investor owned utilities (IOUs) execute RPS contracts within one year after approval of an IOU's shortlist.
- The standards of review (SOR) should be amended to require that bilateral Power Purchase Agreements (PPAs) be compared to all PPAs, and that IOUs explain how amended contracts provide added value to ratepayers.

II. DISCUSSION

A. STAFF PROPOSAL SECTION 4.2 QUESTION (1): ORA Supports Developing a Methodology That Establishes a Threshold Cutoff to the Shortlist Using NMV as a Basis

The Staff Proposal recognizes that the SOR process requires that an executed contract be compared to an IOU's shortlist. Therefore, the shortlist must represent the best value that exists in the market at the time the shortlist is created. ORA agrees with Staff that the Commission should adopt a methodology to determine the threshold cutoff of the shortlist based on NMV,

¹ ALJ Ruling, pp. 1-2.

over and beyond cost.² The NMV compares a project's costs to its benefits.³ If the project's benefits outweigh its costs, then the project will have a positive NMV and the project is appropriate for the shortlist. A threshold cutoff based on NMV will provide guidance for the IOUs to select the best value projects for shortlists, and help ensure ratepayers benefit from the highest valued RPS projects while keeping costs down. Though ORA does not recommend a particular methodology, the methodology's guiding principles should be transparent and standardized as well as flexible enough to respond to changing portfolio needs.

B. STAFF PROPOSAL SECTION 4.2 QUESTION (2): The Commission Should Exclude Projects that do not Meet the NMV from the Shortlist

The Staff Proposal notes that a Commission approved shortlist is an important source of comparable bids for evaluating the reasonableness of PPAs. Staff asks if the IOU adds a project to the shortlist that does not meet the NMV threshold cutoff, should the Commission note in the resolution approving the shortlist that these projects will not be part of the comparable bid in the project evaluation process?⁴

If the Commission does approve a shortlist containing projects that do not meet the threshold cutoff, then ORA agrees that those projects should not be part of the comparable bid in the project evaluation process. Including such outlying projects would skew the comparison and undermine the price reasonableness assessment part of the project evaluation process.

ORA recommends, however, that if a project does not meet the NMV threshold cutoff, then it should generally be excluded from the shortlist. The purpose of a threshold cutoff is to provide a guideline for which projects should be included or excluded from the shortlist. If there is a compelling reason an IOU wants to contract with a project that does not meet the threshold cutoff, such as a project with desirable attributes not valued in the NMV, then ORA recommends that the IOUs make use of the proposed SOR for non-standard RPS PPAs.⁵

² Staff Proposal, pp. 12-13.

³ Pursuant to Decision 12-11-016, the NMV is calculated for each project as: $R(NMV) = (\text{Energy Value} + \text{Capacity Value}) - (\text{Post-Time of Delivery Adjust Power Purchase Agreement} + \text{Transmission Upgrade Cost} + \text{Congestion Cost} + \text{Integration Cost})$.

⁴ Staff Proposal, pp. 12-13.

⁵ Staff Proposal, pp. 27-30.

C. STAFF PROPOSAL SECTION 4.3 QUESTION (1): The Commission Should Require the IOUs to Execute RPS Contracts Within One Year After Approval of an IOUs Shortlist

ORA supports the Staff Proposal’s recommendation that a PPA be executed within one year after the shortlisting process.⁶ As ORA previously stated, a one year requirement will preclude the Commission from making decisions based on stale information from request for offers (RFOs) that are no longer comparable to or competitive with current market prices.⁷ To keep price considerations current and relevant, ORA reiterates its support for a requirement that PPAs be executed within one year after the shortlisting.

D. STAFF PROPOSAL SECTION 4.5 STANDARDS OF REVIEW FOR PPAs: ORA Recommends that Bilateral PPAs be Compared to All PPAs, and that IOUs Explain How Amended Contracts Provide Added Value to Ratepayers

The Staff Proposal recommends a price reasonableness review for the SOR of bilateral contracts that would compare the requested PPA’s price, NMV, and viability to “bilaterally negotiated Commission-approved PPAs for a similar COD [commercial operation date] that were executed within the past twelve months.”⁸ As acknowledged in the Staff Proposal, while the Commission has allowed bilateral contracts, “the focus of the RPS program is procurement through competitive solicitations.”⁹ If the requested bilateral PPA is only compared to other bilateral PPAs, then the bilateral contract process is further removed from the competitive process by potentially establishing a subset of prices only applicable to bilateral PPAs. Instead, ORA recommends that the price reasonableness SOR for bilateral contracts be the same as that for PPAs from solicitations and amended PPAs, which require comparison of the requested PPA’s price, NMV, and viability with “all PPAs that were executed in the 12 months prior to contract execution” used in the SORs for contracts from solicitations and amended contracts.¹⁰ Such comparison to all contracts will allow for situations requiring bilateral PPAs while ensuring that those PPAs are competitive based on all solicitations.

⁶ Staff Proposal, p. 14.

⁷ Comments of the Division of Ratepayer Advocates on the Second Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals, November 20, 2012, p. 4.

⁸ Staff Proposal, p. 22.

⁹ Staff Proposal, p. 21.

¹⁰ Staff Proposal, p. 20 and p. 26.

ORA generally supports the Staff Proposal recommendation that the SOR for amended PPAs include a requirement that any contract amendments or amended and restated contracts not be competitive with the most recent RPS RFO shortlist or RPS PPAs executed in the last 12 months be re-bid into the next RPS solicitation.¹¹ ORA also supports the Staff Proposal recommendation for a Tier 2 Advice Letter for contract amendments that are competitive,¹² with one addition. The Staff Proposal requires the Tier 2 Advice Letter to include: (1) price and NMV before and after the contract amendment, (2) a comparison of the new price and NMV to cohorts from the most recent RPS solicitation, and (3) the reason for the contract amendment. ORA recommends a fourth requirement: the IOU must explain how ratepayers are not adversely impacted by the amendment and whether the amendment will provide ratepayers with additional benefits or value.

III. CONCLUSION

ORA generally supports the Staff Proposal with the recommendations made in these comments.

Respectfully submitted,

/s/ IRYNA A. KWASNY

Iryna A. Kwasny

Attorney for the Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Tel. (415) 703-1477
Fax: (415) 703-2262
Email: iryna.kwasny@cpuc.ca.gov

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¹¹ Staff Proposal, p. 24.

¹² *Id.*

VERIFICATION

I, Iryna A. Kwasny, 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

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filed on May 7, 2014. 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 May 7, 2014 at San Francisco, California.

/s/ IRYNA A. KWASNY

Iryna A. Kwasny