

**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)

U 39 E

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
REPLY TO OPENING COMMENTS ON APRIL 2014
STAFF PROPOSAL FOR RPS PROCUREMENT REFORM**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ALL PARTIES RAISE CONCERNS WITH THE PROPOSED ENVIRONMENTAL DATA ADEQUACY REQUIREMENTS.	2
III.	THE COMMISSION SHOULD NOT ADOPT A SHORTLIST THRESHOLD BASED UPON NET MARKET VALUE.	5
IV.	EXPEDITED CONTRACT REVIEW PROCESSES SHOULD APPLY EQUALLY TO NEW AND EXISTING PROJECTS.....	7
V.	THE COMMISSION SHOULD NOT REQUIRE SUBMISSION OF EXECUTED CONTRACTS WITHIN 30 DAYS.	7
VI.	THE COMMISSION SHOULD NOT REQUIRE PPAS WITH A STORAGE COMPONENT TO BE FILED BY PUBLIC APPLICATION.....	8
VII.	CONCLUSION.....	8

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In accordance with the schedule set forth in the Administrative Law Judge's Ruling Issuing Staff Proposal to Reform Procurement Review Process for the Renewables Portfolio Standard ("RPS") Program, issued on April 8, 2014 in this proceeding (the "ALJ Ruling"), Pacific Gas and Electric Company ("PG&E") provides the following reply to opening comments.

I. INTRODUCTION

Parties' opening comments on the RPS Procurement Reform Staff Proposal ("Staff Proposal") showed a remarkable degree of uniformity in observing that the Commission's procurement reform effort seems to have lost sight of its intended goals of streamlining the RPS contract review process, increasing the transparency and efficiency of the California Public Utilities Commission's (the "Commission") review of RPS procurement, and increasing market certainty.^{1/2/} PG&E agrees with the general consensus that the Commission should not adopt the

^{1/} See ALJ Ruling at 1-2.

^{2/} See, e.g., Iberdrola Renewables ("Iberdrola") Opening Comments at 1-2 ("Unfortunately, but for the laudable and potentially useful proposal to improve treatment of short-term RPS contract review, the Staff Proposal appears to make the process more complex and time consuming, not less."); Independent Energy Producers Association ("IEP") Opening Comments at 12 ("[T]he latest proposal for RPS procurement reform may be attempting to solve problems that existed in the past rather [than those that] are prevalent today. Some of the proposals will not help the Commission reach its goals Furthermore, some of the proposals actually will work against these goals."); Large-Scale Solar Association ("LSA") Opening Comments at 3 ("The 2014 Staff

Staff Proposal without significant modification and should re-focus this proceeding on reforms that directly contribute to the goals it has identified. Among the proposals set forth by Staff, PG&E submits that the highest priority should be placed on streamlining the Commission’s review of certain RPS contracts that meet a list of specific and objective criteria. In particular, PG&E supports the concept of an expedited, Tier 1 advice letter approval process for RPS power purchase agreements (“PPAs”) that result from RPS solicitations and that conform closely to form contracts approved as part of solicitation protocols.

II. ALL PARTIES RAISE CONCERNS WITH THE PROPOSED ENVIRONMENTAL DATA ADEQUACY REQUIREMENTS.

PG&E agrees with most other parties that the Staff Proposal fails to articulate the need or purpose for the proposed environmental data adequacy requirements.^{3/} In fact, even the few

Proposal misses the mark. . . .It is unclear what problems these additional requirements address and how they will improve the process rather than weigh it down.”); Southern California Edison Company (“SCE”) Opening Comments at 3 (“Rather than streamlining the contract review process, increasing the predictability of Commission action on contracts approvals, and enhancing market certainty, the overall effect of the Staff Proposal would be the opposite.”).

^{3/} See, e.g., California Wind Energy Association (“CalWEA”) Opening Comments at 2 (“The Staff Proposal does not demonstrate how [the environmental data adequacy requirement] will be effective in ‘provid[ing] an extra step of due diligence to assess the overall viability of an RPS eligible process.’”) (citing Staff Proposal at 9); Center for Energy Efficiency and Renewable Technologies (“CEERT”) Opening Comments at 7 (the Staff Proposal “not only fails to provide record or legal support for each of the new requirements, but leaves vague or subject to speculative interpretation the data being requested and, more importantly, how it is to be used or evaluated by staff.”); Green Power Institute (“GPI”) Opening Comments at 2 (“We simply do not see any context in which the Commission needs [some of the environmental data requested in the Staff Proposal] in order to determine whether to approve a short list or a PPA”); LSA Opening Comments at 4 (“It is . . . unclear how Staff will utilize the [environmental] data and whether there is evidence of [a] problem with viability that rises to the level of instituting a new threshold for contract review and approval.”); NextEra Energy Resources, LLC (“NextEra”) (“It is not clear why a further [environmental] assessment by Commission Staff is either beneficial or required in the contract review process, or how Staff will evaluate such an exhaustive amount of additional [environmental] data and the value the new [environmental data adequacy] requirement has for the contracting and approval process.”); San Diego Gas & Electric Company (“SDG&E”) Opening Comments at 5 (“The Staff Proposal . . . fails to establish that the public interest would be served by adoption of [the environmental data adequacy requirements] . . . [I]t is not clear how, from a practical perspective, the Commission would use the information in the RPS procurement review process.”); Union of Concerned Scientists (“UCS”) Opening Comments at 2 “[T]he Staff Proposal lacks information on how each of [the environmental data adequacy requirements] will fill a specific information gap that Energy Division staff need to successfully

parties that support the concept of new environmental data requirements recognize that the Staff Proposal should at least be modified.^{4/}

The comments underscore that the Staff Proposal on environmental data requirements is a solution in search of a problem. The viability of RPS projects has steadily increased in the past years, and as further discussed in PG&E’s opening comments, relatively few RPS projects in PG&E’s portfolio have been terminated or failed specifically because of permitting obstacles.^{5/} As several parties observed, the requirements are also redundant with the existing permitting processes conducted by land use agencies, suggesting any permitting risk analysis would at best duplicate and at worst interfere with those existing processes.^{6/}

The Joint Conservation Parties support the data requirements as a “first step” toward promoting “landscape-scale planning” for renewables.^{7/} While PG&E supports holistic and comprehensive approaches to environmental issues and has participated in efforts to facilitate coordination across jurisdictions to rationalize the siting of new renewable generation facilities, PG&E respectfully submits that the Joint Conservation Parties’ proposals would hinder the renewable development process without any significant gain in efficiency, transparency, or market certainty. They would have the Commission massively expand the existing PPA review process to conduct landscape-scale planning based upon portions of potentially incomplete records created by the jurisdictional permitting authorities. The Commission is not equipped to conduct this type of land use planning, which, as IEP points out, will likely lead to significant

evaluate PPAs submitted through advice letters.”).

^{4/} See Opening Comments of the Nature Conservancy, Defenders of Wildlife, Natural Resources Defense Council, and Sierra Club California (collectively, the “Joint Conservation Parties”) at 10, 16 (recommending modifications to the Staff Proposal); California Farm Bureau Federation Opening Comments at 2 (noting that one of the proposed data requirements may be difficult to assess).

^{5/} See PG&E Opening Comments on the ALJ Ruling at 4.

^{6/} See, e.g., IEP Opening Comments at 3; NextEra Opening Comments at 3-4.

^{7/} Joint Conservation Parties Opening Comments at 7, 9, 17.

disputes and unnecessary litigation.^{8/} The end result will be that the RPS PPA review process will become bogged down in a quasi-permitting process, defeating the streamlining goals of this reform proceeding.

Fortunately, there is a well-established and far better way to plan for renewable energy development. Federal, state, and local agencies with the jurisdiction over siting of renewable facilities can establish within their jurisdictional boundaries areas that are preferred for the siting of renewables and areas where renewables cannot be sited, or can only be sited under certain conditions. Additionally, these agencies can work together, as they have sought to do in the Desert Renewable Energy Conservation Plan (“DRECP”),^{9/} to harmonize designations across jurisdictions to create the landscape-scale plans that the Joint Conservation Parties seek. These designations and plans give renewable energy developers clear signals regarding where they can build and where they cannot. As SCE notes, neither a developer nor its investors will be willing to spend huge sums^{10/} pursuing the interconnection studies, land rights, and then the PPA needed to build a project where the jurisdictional land use agency has clearly indicated it may not be built.^{11/} Both the land use process and the inherent financial disincentives to developing projects that cannot be permitted naturally screen out RPS projects that face major permitting obstacles, without the need for the Commission to become mired in a resource-intensive, lengthy, duplicative, and potentially contentious environmental review.

^{8/} See IEP Opening Comments at 3.

^{9/} “The DRECP is focused on the desert regions and adjacent lands of seven California counties- Imperial, Inyo, Kern, Los Angeles, Riverside, San Bernardino, and San Diego. It is being prepared through an unprecedented collaborative effort between the California Energy Commission, California Department of Fish and Wildlife, the U.S. Bureau of Land Management, and the U.S. Fish and Wildlife Service also known as the Renewable Energy Action Team. . . . Approximately 22.5 million acres of federal and non-federal California desert land are in the DRECP Plan Area.” *DRECP* internet homepage, available at <http://www.drecp.org/>.

^{10/} CalWEA Opening Comments at 2 (noting that developers place 10-15% of their development capital at risk in the siting process).

^{11/} SCE Opening Comments at 5. See also NextEra Opening Comments at 4.

The Commission should decline the Joint Conservation Parties’ proposal to convert the RPS contract review process into a second environmental review. The laudable goals set forth by those parties can and should be accomplished through parties’ involvement in the planning and permitting process conducted by the jurisdictional land use agencies.

III. THE COMMISSION SHOULD NOT ADOPT A SHORTLIST THRESHOLD BASED UPON NET MARKET VALUE.

The ALJ ruling asks whether there should be “a methodology to determine the threshold cut-off of the shortlist based on Net Market Value (NMV), over and beyond cost.”^{12/} The Office of Ratepayer Advocates (“ORA”) supports the establishment of a cut-off based on NMV.^{13/} ORA characterizes the NMV calculation as comparing the project’s cost to its benefits, and states “if the project’s benefits outweigh its cost, then the project will have a positive NMV and the project is appropriate for the shortlist.”^{14/}

PG&E disagrees with ORA that the Commission should establish an NMV threshold for the shortlisting of RPS solicitation bids. First, PG&E agrees with LSA that the Staff Proposal fails to make clear how the proposed threshold would be consistent with the current least-cost, best-fit (“LCBF”) methodology.^{15/} The NMV calculation is only one component of PG&E’s LCBF methodology. As noted by ORA and established in Decision (“D.”)12-11-016, the NMV calculation includes energy value, capacity value, PPA price, transmission cost, congestion costs, and any integration cost that the Commission establishes in the future.^{16/} As further described in PG&E’s approved 2013 RPS Solicitation Protocol,^{17/} the NMV calculation is only a first step in its overall LCBF evaluation. PG&E incorporates a number of portfolio-based adjustments to the

^{12/} ALJ Ruling at 12.

^{13/} ORA Opening Comments at 1-2.

^{14/} *Id.* at 2.

^{15/} LSA Opening Comments at 8.

^{16/} ORA Opening Comments at 2, fn. 3.

^{17/} Filed in R.11-05-005 on December 4, 2013.

NMV to create a Portfolio-Adjusted Value (“PAV”) and then considers additional qualitative criteria, including project viability. Thus, as SDG&E argues,^{18/} NMV, standing alone, is not an appropriate evaluation metric.

Second, the appropriate size and composition of the RPS shortlist will vary from solicitation to solicitation. Depending on the competitiveness of the bids and PG&E’s procurement target, the average PAV of bids on PG&E’s shortlist may be higher or lower than in prior years. Furthermore, because PG&E considers qualitative criteria that are not captured in the PAV scoring, some projects may be shortlisted for reasons other than the competitiveness of their PAV scores.

Third, ORA’s proposed threshold should not be adopted even if the Commission were to adopt a shortlist cut-off. ORA appears to suggest rejecting any bid with a negative NMV.^{19/} PG&E notes that a positive NMV essentially indicates that the project has more value than alternative sources of energy based on PG&E’s forward market price forecasts. In other words, an RPS project with a positive NMV has no “premium” for the Renewable Energy Credit. It is unreasonable, at this time, and inconsistent with the Preferred Loading Order, , to determine that the only RPS projects worth pursuing are those that can demonstrate that they offer more value than conventional power resources.

Finally, there is no need at this time for the Commission to adopt any up-front, specific threshold for shortlisting. First, the Commission is able to remove projects from an IOU’s shortlist if it determines that the bid does not offer sufficient value to merit further consideration. Second, assuming that a bid is shortlisted and results in an executed PPA, the Commission and ORA will have the opportunity to review that PPA and determine whether the final terms of the PPA merit approval. Third, if the Commission is concerned that a particular project on the

^{18/} SDG&E Opening Comments at 6.

^{19/} ORA Opening Comments at 2 (stating that projects with a positive NMV are appropriate for shortlisting).

shortlist may tend to skew the ability of the shortlist as a whole to provide a benchmark for the reasonableness of PPAs executed in the future, the Commission has the ability to allow a project to remain on the shortlist but to exclude that project from the “cohort” used for benchmarking. Given these available mechanisms for regulatory oversight of the shortlisting process, the Commission need not, and should not, adopt an arbitrary cut-off.

IV. EXPEDITED CONTRACT REVIEW PROCESSES SHOULD APPLY EQUALLY TO NEW AND EXISTING PROJECTS.

NextEra and IEP both argue for the adoption of an expedited review process for contracts with existing projects, asserting that recontracting projects will likely have lower risk and higher value.^{20/} PG&E generally agrees that the present reform effort should result in expedited review processes for contracts meeting certain specific and objective criteria. However, PG&E does not agree that these expedited processes should be limited to the recontracting of existing facilities. Where a new project is competitive, has demonstrated a high likelihood of viability, and the proposed PPA terms conform closely to the terms approved in a Form RPS PPA, the Commission should allow expedite expedited review of the project whether or not it is existing. PG&E agrees with both of these parties that any expedited review process should not mandate absolute conformity with a Form RPS PPA, since every major project will require, or will offer additional customer benefit from, at least minor modifications to the Form.

V. THE COMMISSION SHOULD NOT REQUIRE SUBMISSION OF EXECUTED CONTRACTS WITHIN 30 DAYS.

Iberdrola proposes that “one way to expedite the contracting process would be to require the IOUs to submit final negotiated contracts to the Commission within 30 days of executing the contract.”^{21/} PG&E believes that this 30-day requirement would be unworkable in specific cases and therefore supports the Staff Proposal that any deadline established for the filing of executed

^{20/} NextEra Opening Comments at 6-7; IEP Opening Comments at 7.

^{21/} Iberdrola Opening Comments at 4.

PPAs for commission review should be no earlier than 3 months from the execution date of the contract.^{22/} Moreover, in establishing any deadline for contract submission, the Commission must consider any new requirements that it establishes as part of this or any other proceeding. Particularly where an IOU must rely on its counterparty to provide the information needed to meet requirements, an IOU should not be required to comply with an excessively short period for preparation of an advice letter submitting a PPA for approval.

VI. THE COMMISSION SHOULD NOT REQUIRE PPAS WITH A STORAGE COMPONENT TO BE FILED BY PUBLIC APPLICATION.

NextEra notes that the Staff Proposal is not clear regarding whether renewable energy projects coupled with energy storage technology would be considered non-commercial and would therefore be required to submit a public application for approval.^{23/} PG&E strongly agrees with NextEra that “the mere addition of storage to a commercialized technology should not in and of itself push a project into the more lengthy application process.”^{24/} Particularly at this moment in RPS implementation when IOUs are working to assess how RPS projects bid into the RPS solicitations can help meet the Commission’s energy storage requirements, the Commission should not disincentive projects that incorporate storage by establishing more difficult and lengthy approval processes for those projects.

VII. CONCLUSION

Consistent with its and many other parties’ comments in this proceeding, PG&E urges the Commission to reconsider its approach to RPS procurement reform and to re-focus this effort on reforms that directly contribute to streamlining and market certainty. Most importantly, the Commission should expedite the approval of procurement meeting certain conditions through a Tier 1 Advice Letter approval process. However, for the reasons set forth above and in PG&E’s

^{22/} See Staff Proposal at 13.

^{23/} NextEra Opening Comments at 10.

^{24/} *Ibid.*

opening comments on the Staff Proposal, the Commission should not require additional environmental data adequacy requirements unless they are directly related to Project Viability Calculator inputs and are limited to publicly-available data regarding permitting status, should continue to allow minor contract amendments to occur through the contract administration rather than advice letter process, and should not modify the existing Tier 2 advice letter process for submission and review of RPS solicitation shortlists.

Respectfully Submitted,

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PACIFIC GAS AND ELECTRIC COMPANY

Dated: May 28, 2014

VERIFICATION

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing "PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) REPLY TO OPENING COMMENTS ON APRIL 2014 STAFF PROPOSAL FOR RPS PROCUREMENT REFORM," dated May 28, 2014. The statements in the foregoing documents are true of my own knowledge, except as to 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 this 28th of May, 2014 at San Francisco, California.

/s/ Sandra J. Burns

Sandra J. Burns
Principal
Pacific Gas and Electric Company