

**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 NATURE CONSERVANCY, DEFENDERS OF
WILDLIFE, NATURAL RESOURCES DEFENSE COUNCIL, AND SIERRA CLUB
CALIFORNIA ON THE APRIL 2014 RPS PROCUREMENT REFORM STAFF
PROPOSAL**

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I. INTRODUCTION

In accordance with the Rules of Practice of Procedure of the California Public Utilities Commission, the undersigned attorneys, including the undersigned Administrative Law Judge DeAngelis, The Nature Conservancy, Defenders of Wildlife, Natural Resources Defense Institute, and the undersigned, hereby submit these reply comments on the staff proposal for revising the Renewable Portfolio Standard. The undersigned propose to file joint comments to reflect our collaborative effort, achieve consensus in advance, and to minimize duplication in the Proceeding. The comments of the Joint Conservation Parties are limited and focus on opening comments related to the proposed data adequacy requirement.

Opening comments made it clear that there are questions among parties about the rationale and implementation of the proposed data adequacy requirement. With these questions in mind, the Joint Conservation Parties:

- ⌘ Recommend that the Commission adopt the proposed data adequacy requirement with modifications recommended by the Joint Conservation Parties in opening comments. These recommendations mitigate many of the concerns raised by parties in opening comments.
- ⌘ Urge the Commission to include further detail on the implementation of the proposed data adequacy requirement.

II. RESPONSE TO KEY ISSUES RAISED IN OPENING COMMENTS

A. Most parties agree that the proposed data adequacy requirement requires further clarification.

In our Opening Comments, the Joint Conservation Parties supported the intent of the proposed data adequacy requirement, but asked that the Commission adopt modifications to the proposal. From the opening comments of other parties it is clear that the ruling would benefit from further clarification as to the purpose and implementation of the proposed requirement. We note that several parties, including CalWEA¹ and LSA², state their opposition to the

¹ CalWEA Opening Comments, at pg. 1.

² LSA Opening Comments, at pg. 4.

proposed data adequacy [REDACTED]³. We disagree with this recommendation and urge the Commission to adopt both the rationale outlined within opening comments of the Joint Conservation Parties, as well as our suggested modifications for implementation reiterated herein.

1. Rationale for Data Adequacy Requirement

Many [REDACTED] proposed data adequacy requirement raised questions about the rationale of the proposed requirement. These questions include further clarification of [REDACTED] the proposed data adequacy requirement would do so. As examples, CEERT and UCS request that before moving forward with any environmental data requirements, the Commission should [REDACTED] [REDACTED]⁴ [REDACTED] sion should clarify the intended benefits of [REDACTED]⁵.

In our opening comments, we outlined three compelling reasons why the data adequacy requirements are needed:

- (1) To minimize project viability risk;
- (2) To better align permitting and procurement processes; and
- (3) To improve integration with local, state, and federal plans, policies and processes.

Regarding CEERTs concerns, the data adequacy requirement will provide the foundation for solving the problems of (1) contracting with projects that have high viability risks, (2) misalignment between permitting processes and procurement processes, and (3) contracting with projects that are not well aligned with local, state and federal plans, policies and/or processes. Central to solving these problems is the consistent use of environmental data when evaluating the value, costs and benefits of bids for power purchase agreements. The benefits of the specific data requested, as modified by the recommendations of the Joint Conservation Parties, are detailed below:

³ LSA Opening Comments, at pg. 7.

⁴ CEERT Opening Comments, at pg. 11.

⁵ UCS Opening Comments, at pg. 1.

- ⌘ *Section (a) — Provide a GIS file of the project boundary.* The project boundary, submitted in this manner allows for a more accurate depiction of where a project is located and provides for a geospatial evaluation. This is fundamental to understanding the risks associated with the siting of a project, including environmental impacts, but also factors such as flood zones, zoning, etc. As we stated in our opening comments, this basic information provides the benefit of allowing the utility to assess the project location against multiple data sources, including land use planning. This data requirement provides information needed both to minimize project viability risk and to improve the integration with land use planning processes and the policies of other agencies.
- ⌘ *Section (b) — List all of the environmental permits and discretionary approvals required from local, state, federal, and/or tribal authorities, status of approvals, schedule to complete permits.* The benefit of this information is that it provides the utilities better information by which to assess viability risk from permitting. Without understanding the full suite of permits and approvals necessary for a project to be developed, the utility cannot adequately evaluate risks to viability.
- ⌘ *Section (c) — Provide written documentation of initial reviews, consultations including tribal, and/or records of outreach to or meetings with applicable permitting Agencies (e.g., California Department of Fish and Wildlife, US Fish and Wildlife, County, Army Corps of Engineers, Bureau of Land Management, U. S. Dept. of Defense, U.S. Forest Service, U.S. EPA, California Energy Commission, cities or counties, etc.). Include any comments, recommendations or correspondence from relevant permitting Agencies, if they have been provided.* The information from these initial reviews is a key part of the due diligence that any conscientious project proponent will undertake. It is important that project developers demonstrate to the utilities that they are diligently identifying potential viability risks to their projects. In addition, the comments, recommendation and/or correspondence from Agencies can provide important insights into project viability, as well as degree of alignment with planning processes and policies of other agencies. Agencies usually comment on draft CEQA and/or NEPA documents. However, because utilities often contract for projects before draft environmental documents are issued, correspondence and early communications are often the best

means to identify required permits and viability risks.

- ⊗ *Section (d) ... List of the required environmental review documents under CEQA and/or NEPA, including status and timeline.* The benefit of this proposed requirement is that CEQA and/or NEPA documents can provide an independent third-party identification of project risks that would affect project viability and cost. These environmental documents, prepared by a CEQA and/or NEPA lead agency with input from trustee and responsible agencies, can identify expected project impacts and accompanying mitigation and permitting requirements, which directly impact project timing, cost and ultimately viability. Additionally, when EIRs and/or EISs are prepared, a range of project alternatives are considered including location, size, and technologies. This alternative analysis can result in the identification of more viable project alternatives.
- ⊗ *Section (e) ... Require the project proponent to describe their proposed project within the context of planning processes that have completed CEQA and/or NEPA review (e.g., NCCP plans, land use planning designations, endangered species recovery plans, BLM Solar Energy Program).* As noted in our opening comments, this proposed revision to the data adequacy requirement would capitalize on the significant investments that federal, state and local governments are putting into land use and renewable energy planning. Over the past six years, there have been significant advancements and public investments in planning and permitting for renewable energy and conservation, including several ongoing and completed ambitious multi-agency planning processes. However, generation and transmission investments continue to occur without considering the information in these processes, as well as other completed conservation plans, ultimately resulting in inefficiencies and wasted taxpayer resources. This proposed data adequacy requirement is a critical pathway for aligning plans for development and conservation with the procurement process, and ultimately, the transmission planning process.

As noted in our opening comments, the Commission has authority to minimize risk in procurement. In (D) 09-06-018 the Commission established the Project Viability Calculator as

projects that bid into the RPS solicitation. The Commission has also established the use of

the procurement process.

The Joint Conservation Parties believe that the data adequacy requirement has an important role at the earliest stages of the procurement process in project viability analyses and shortlisting. The proposed requirement should function to ensure that the bid package has sufficient environmental data for the utilities to conduct project viability and valuation analyses pursuant to requirements including the PVC and LCBF approved methodologies. We agree [REDACTED] should reinforce the responsibility of the IOUs to undertake thorough project viability analyses during the shortlistin [REDACTED]⁷. Using this information early in the procurement process will facilitate efficient and effective use of Commission and utility resources by avoiding significant time and investments in negotiating contracts which ultimately have viability concerns.

A number of parties raised questions about how Commission staff will utilize the data⁸ proposed within the requirement. There is value to the Commission in having environmental data in the record that substantiates the results of viability and valuation assessments pursuant to the PVC and LCBF approved methodologies at the time of shortlist approval, as well as contract approval. As noted in (D) 09-06-018, [REDACTED] ility in its [REDACTED] making key decisions about whether or not to approve shortlists and power purchase agreements. These decisions are supported by the analysis contained within the PVC and LCBF. The proposed data adequacy requirement would ensure that the Commission has access to the important underlying information that should inform both the PVC and LCBF, allowing the Commission to make more informed decisions.

We a [REDACTED] Inclusion of appropriate [REDACTED] resources in a positive direction, but only if it creates a balanced approach to the data review. Items a) through d) present themselves as matters driven by clear, specific regulatory or statutory requirements associated with projects. It

⁷ UCS Opening Comments, at pg. 2.

⁸ LSA Opening Comments, at pg. 4.

is item e) that will provide a broad category of issues [REDACTED]⁹. The modifications proposed by the Joint Conservation Parties in Opening Comments¹⁰ seek to [REDACTED] specific regulatory or statutory requirements associated with projects; specifically by modifying section (e) [REDACTED] context of planning processes that have completed CEQA and/or NEPA review. Our proposed modifications will also substantially reduce the volume of information requested in the original proposal, mitigating several of the concerns raised by parties in opening comments about volume of data.

b) The Data Adequacy requirement will improve implementation of existing tools.

We agree with other parties that the Commission should leverage available tools and [REDACTED] resource selection, the RPS Project Viability Calculator should be improved to account for the [REDACTED]¹¹. We are interested in exploring this idea with other parties to determine if modifications to PVC or LCBF methodologies can help achieve the three goals outlined by the Joint Conservation Parties. The information in the modified data adequacy proposal, all publicly available, would be essential in informing modified PVC and LCBF methodologies.

c) With modifications proposed by the Joint Conservation Parties, the volume of information required will be greatly reduced.

Several parties (e.g., LSA, CalWEA, PG&E) note concern over the volume of information requested by the data adequacy requirement. As an example, PG&E states the requirement is [REDACTED] burdensome as to be practically unworkable¹². As noted in our opening comments, we are also sensitive to the concerns about the volume of information in the data

⁹ CFBF Opening Comments, at pg. 2.

¹⁰ Joint Conservation Parties Opening Comments, at pg. 15.

¹¹ IEP Opening Comments, at pg. 3.

¹² PG&E Opening Comments, at pg. 3

adequacy proposal. For that reason, we proposed modifications in Opening Comments¹³ that would greatly reduce the volume of information requested by the Commission. Specifically we proposed to modify section (d) to have the CEQA/NEPA documents available upon request or providing a web/hyperlink to the location of the documents on the website of the lead permitting agency, instead of having the environmental review documents sent with each filing. We disagree with the assertion that the proposed requirement is burdensome, especially with proposed modifications.

d) *The proposed Data Adequacy requirement utilizes information available to the public, will not decrease project viability and can be*
[REDACTED]
rulings and orders.

PG&E notes that the Data Adequacy Requirement could “serve to decrease project [REDACTED]”¹⁴. SDG&E asserts [REDACTED]
[REDACTED]
development by competitors, thereby undermining project viability¹⁵ and additionally that imposing a [REDACTED]- sensitive project information could chill participation in future RPS solicitati [REDACTED] the market price of energy.¹⁶ We disagree with these assertions. First, as discussed above, this information mirrors what a developer would already compile as part of basic due diligence and would not therefore not burden developers to the point of discouraging participation in [REDACTED]. This is particularly true in the current renewables landscape in which there are a number of projects without power purchase agreements that have fully completed or are advanced in the CEQA/NEPA processes. Second, the modified data adequacy information, which is all publicly available, would not invite interference by competitors as it does not provide any data which would not otherwise be available to competitors with some slight effort. Nor is it clear how publicly available, accurate environmental information would impact

¹³ Joint Conservation Parties Opening Comments, at pg. 14.

¹⁴ SDG&E Opening Comments, at pg. 4.

¹⁵ SDG&E Opening Comments at pg.4.

¹⁶ SDG&E Opening Comments, at pg. 2.

developers' ability to negotiate supply, construction or other commercial contracts that would impact contract price.

Additionally, [REDACTED] Developers may cla [REDACTED]

[REDACTED]
[REDACTED]
and the contractual obligation to use commercially reasonable efforts to obtain Commission [REDACTED] ¹⁷ We do not believe providing information required *by* the Commission *to* the Commission in an advice letter would violate any contractual obligations of utilities to use commercially reasonable efforts to obtain Commission approval.

We believe that the proposed data adequacy requirement, with modifications, is an important addition to procurement reform. We respectfully ask that the Energy Division consider issuing further detail on the implementation of the proposed requirement, including information on roles, process, and confidentiality.

B. The proposed data adequacy requirement [REDACTED] undercut [REDACTED] permitting agencies.

In opening comments some parties have suggested that the data adequacy requirement [REDACTED] ¹⁸ [REDACTED] ¹⁹ the authority of permitting agencies. This is simply not true. The information requested in the proposed data adequacy requirement, as modified, is nothing more than what is typically gathered by project developers as part of due diligence for [REDACTED]

decisions on whether or not a utility should contract with a particular project does not hinder the authority of agencies making land use, wildlife or environmental quality determinations. In fact, the opposite is true. Consideration of environmental information as part of the procurement process would facilitate greater [REDACTED] processes and policies.

¹⁷ SDG&E Opening Comments, at pg.4.

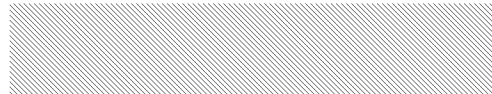
¹⁸ LSA Opening Comments, at pg. 6.

¹⁹ PG&E Opening Comments, at pg. 4.

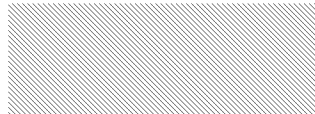
III. CONCLUSION

The Joint Conservation Parties appreciate this opportunity to submit reply comments on the April 2014 RPS Procurement Reform Staff Proposal and look forward to working with all parties to shape the proposed data adequacy requirement.

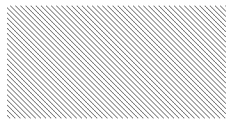
Respectfully submitted this 28th day of May 2014, at San Francisco, California.



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Verification

I, Derek Nelson, am the representative for Sierra Club. The Sierra Club has joined with other parties in submitting these comments. The statements in the foregoing document 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.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 28, 2014, at San Francisco, California.

/s/

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