

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 OFFICE OF RATEPAYER ADVOCATES
ON THE APRIL 2014 STAFF PROPOSAL TO REFORM
RPS PROCUREMENT REVIEW PROCESS**

DIANA L. LEE

Attorney for
The Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-4342
Facsimile: (415) 703-4432
Email: Diana.Lee@cpuc.ca.gov

**CHARI WORSTER
COLIN RIZZO**

Analysts for
The Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1585
Email: Chari.Worster@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to the California Public Utilities Commission (Commission) Rules of Practice and Procedure 14.3, the Office of Ratepayer Advocates (ORA) respectfully submits the following reply comments to parties' opening comments on the 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 (April 8 ALJ's Ruling). Commission staff prepared the April 2014 Renewables Portfolio Standard (RPS) Procurement Reform Staff Proposal (April 2014 Staff Proposal) to streamline the RPS contract review process, increase the transparency of the Commission's review of RPS procurement, establish clear standards for this review process, issue Commission determinations on contract reasonableness on a defined timeline, and generally, support market certainty in RPS procurement.¹ The April 2014 Staff Proposal establishes parameters for execution and submission of Power Purchase Agreements (PPA) for approval and ensures the Commission has a comprehensive and accurate perspective of the projects being considered for review.

Fourteen parties,² including ORA, filed opening comments on the April 2014 Staff Proposal. ORA addresses the parties comments in the Discussion Section below. ORA generally supports and recommends that the Commission adopt the April 2014 Staff Proposal with following additional recommendations:

- ORA recommends that the Commission adopt the April 2014 Staff Proposal directing applicants to include data adequacy requirements in all RPS PPA-related documents, and recommends that the Commission also include a 30-day timeline period for Investor Owned Utilities (IOUs) to re-submit their document if the Commission finds the information filed is inadequate, inaccurate, or incomplete.
- ORA recommends that the Commission reject the Advice Letter (AL) if the IOU fails to adhere to the 30-day deadline.

¹ April 8 ALJ's Ruling, pp. 1-2, April 2014 Staff Proposal, p. 2.

² Parties that filed opening comments on the April 14 2014, Staff Proposal include NextEra Energy Resources LLC (NEER), Green Power Institute (GPI), Union of Concerned Scientists, Center for Energy Efficiency and Renewable Technologies (CEERT), Independent Energy Producers Association (IEP), San Diego Gas & Electric Company (SDG&E), PacifiCorp., Bear Valley Electric Service, Liberty Utilities, LLC, California Farm Bureau Federation, Iberdola Renewables, LLC (Iberdola), Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), Large-Scale Solar Association (LSA), and California Wind Energy Association.

- ORA recommends that the IOU's file their shortlists via the Tier 3 AL process within 90 days after the close of solicitation.
- ORA recommends that the Commission adopt the April 2014 Staff Proposal's Standard of Review (SOR) for unbundled Renewable Energy Credits (RECs).

II. DISCUSSION

A. **ORA recommends that the Commission adopt the April 2014 Staff Proposal directing applicants to include data adequacy requirements in all RPS PPA-related documents and recommends that the Commission adopt a 30-day timeline period for IOUs to re-submit their document if the Commission finds the information filed is inadequate, inaccurate, or incomplete.**

ORA generally supports the April 2014 Staff Proposal to require all applicants to include data adequacy requirements in all RPS PPA-related documents submitted to the Commission for approval. These include all requirements described under Section 4.1 Proposal – Data Adequacy Requirement of the April 2014 Staff Proposal. However, ORA recommends amending the April 2014 Staff Proposal to include filing timelines to ensure that documents re-submitted to the Commission are filed in a timely manner.

Several parties opposed and expressed concern with the additional data adequacy requirement. SDG&E states that the proposal chills participation in the renewables market, increases costs borne by ratepayers, and increases administrative burdens while having little impact in project viability.³ SCE states that data requirements duplicate the efforts of a lead agency, are time consuming, and provide little value.⁴ The IEP states that the amount of data required to be filed will lead to needless delay in the utilities' filings and will undermine timely consideration, and review by the Commission.⁵ LSA, NEER, and CEERT believe the additional data adequacy requirement imposes a heavy burden on staff resources, may increase project risk and thus, undermines procurement efficiency.⁶ LSA also states that this requirement could have the unintended consequence of undercutting the role of permitting agencies.⁷

³ SDG&E Opening Comments, pp. 2-5.

⁴ SCE Opening Comments, p. 2.

⁵ IEP Opening Comments, p. 2.

⁶ LSA Opening Comments, pp. 4-7; CEERT Opening Comments, p. 2.

⁷ LSA Opening Comments, pp. 4-7.

ORA concurs with the April 2014 Staff Proposal that establishing clear data standards and requirements, and increasing transparency will help streamline the review process. First, the April 2014 Staff Proposal takes into consideration the Energy Division (ED) staff's experience with the existing RPS Procurement Review Process and explained that the additional data adequacy requirement is essential to ensure that necessary environmental permits are in place and any known issues that may put the permitting process at risk are identified prior to approving any project. Accordingly, these additional requirements do provide additional information that will help assess the overall viability of an RPS eligible project.

Contrary to the parties' arguments, requiring IOUs to submit the additional data adequacy requirement does not duplicate the efforts of a lead agency performing the environmental review, nor would this insert the Commission into the permitting process.⁸ The April 2014 Staff Proposal is clear that these requirements "are not intended to be additional permitting requirements or prejudge the permitting process."² Instead, the information will allow the Commission to determine the overall viability of the project.

The April 2014 Staff Proposal requires IOUs to verify that the information submitted to the Commission is accurate and complete. If the Commission finds the information is inadequate and/or inaccurate, the Commission will suspend the AL and notify the IOU via the RPS service list, Rulemaking (R.) 11-05-005, or the service list in the successor proceeding that the IOU must re-submit the document with the proper information.¹⁰ ORA recommends setting a 30-day timeline for the IOU's to re-submit their document. ORA further recommends that the Commission should reject the AL if the IOU fails to adhere to the 30-day deadline. The IOU will have the opportunity to submit its completed documents in the next solicitation round. Setting clear timelines should help streamline the RPS review and evaluation process.

⁸ GPI Opening Comments, pp. 1-2; LSA Opening Comments, pp. 4-7; UCS Opening Comments, pp. 2-3, NEER Opening Comments, pp. 3-5.

² April 2014 Staff Proposal, p. 9.

¹⁰ April 2014 Staff Proposal, p. 9.

B. SOR for IOUs' Shortlists.

1. ORA recommends that the Commission adopt the April 2014 Staff Proposal directing IOUs to file their shortlists via the Tier 3 AL process.

The April 2014 Staff Proposal directs IOUs to file their shortlists through the Tier 3 AL review process for shortlist approval instead of the current Tier 2 AL review process. Several parties opposed the proposed filing method. SDG&E states that the current Tier 2 AL process allows for sufficient review time and public input and should be retained.¹¹ IEP states that moving from Tier 2 to a Tier 3 AL filing causes additional delay and increases regulatory burden.¹² Iberdola states that extra analysis is unnecessary and LSA states that exhaustive review of shortlist is inefficient use of Commission resources because terms and conditions and sometime price can change over the course of negotiations.¹³ NEER states that to the extent that shortlist approval process is lengthy, it is likely to undermine the procurement process as developers are left with the risk of bid prices becoming stale.¹⁴ Finally, CEERT states that the 2014 April Staff Proposal does not provide sufficient justification for changing the filing from a Tier 2 AL to a Tier 3 AL.¹⁵

Contrary to the parties comments above, the Commission should conduct a more thorough analysis and evaluation of the project bids submitted in the shortlist AL process as proposed by the April 2014 Staff Proposal to determine among others , that comparable bids for evaluating reasonableness of PPAs were obtained. Currently, IOUs have the option to go through a Procurement Review Group (PRG) meeting to allow for stakeholder input. The April 2014 Staff proposal makes it *mandatory* that each IOU hold a PRG meeting. This new requirement guarantees and affords stakeholder input and discussion on the shortlist in the AL process. The combination of the Tier 3 AL along with the mandatory PRG provides a closer look upfront that will allow for a streamlined process at the backend. Putting emphasis and an exhaustive review of shortlist in the AL process reduces the level of uncertainty during the RPS contract process.

¹¹ SDG&E Opening Comments, p. 7.

¹² IEP Opening Comments, p. 4.

¹³ Iberdola Opening Comments,p.4; LSA Opening Comments, pp. 7-8.

¹⁴ NEER Opening Comments, p. 6.

¹⁵ CEERT Opening Comments, p. 11.

2. ORA recommends that IOUs file their shortlists via a Tier 3 AL process within 90 days after the close of solicitation.

The April 2014 Staff Proposal recommends the Commission direct IOUs to file their shortlist by a Tier 3 AL within 60 days after the close of solicitation.¹⁶ SDG&E states that the most recent RPS Request for Offer (RFO) provided a bid analysis timeline of approximately 100 days.¹⁷ PG&E and SCE assert that the 60-day deadline is an unreasonably short period of time to file their shortlist. PG&E requests a 120-day deadline and SCE a 90-day deadline.¹⁸ ORA agrees that 60 days may not allow adequate time to review and file the short list and therefore supports SCE's recommended 90-day deadline as allowing more time for review while still moving the process forward as expeditiously as possible.

C. ORA recommends that the Commission adopt the April 2014 Staff Proposal's SOR for unbundled RECs.

The April 2014 Staff Proposal's SOR proposes that unbundled REC purchase contracts from solicitations and bilaterally negotiated be reviewed for consistency with the RNS and procurement authorization as approved in the IOU's RPS Procurement Plan.¹⁹ SCE suggests that in cases where the RPS net short calculations based on the IOU's RPS renewable net short (RNS) and the Commission's RPS (RNS) methodology as approved in the IOU's most recently approved RPS procurement plan significantly differ, the REC quantity contracted must be consistent with the RPS net short based on the IOU's RPS RNS methodology.²⁰ This suggestion by SCE is now moot because of the May 2014 Administrative Law Judge's Ruling on the RNS.²¹ SDG&E argues that a REC contract should be evaluated in the context of its value to the

¹⁶ April 2014 Staff Proposal, p. 11.

¹⁷ SDG&E Opening Comments, p. 8.

¹⁸ PG&E Opening Comments, p. 9; SCE Opening Comments pp. 8-9.

¹⁹ April 2014 Staff Proposal, p. 31.

²⁰ SCE, Opening Comments, p. 25.

²¹ In the May 2014 Administrative Law Judge's Ruling on the Renewable Net Short, Attachment A, pp. 4-6, the IOUs were directed to include on a going-forward basis an RPS Portfolio Optimization Strategy as a component of their annual RPS filings. As part of this optimization strategy, the IOUs will now provide both a public RNS, known as a Physical RNS, and a confidential RNS, known as an Optimized RNS in their annual RPS plan. The Physical RNS will include an IOU's executed contracts, utility-owned generation, and generic procurement programs but not include the strategy for using RECs. The Optimized RNS will be confidential and will include assumptions for its overall portfolio optimization strategy including any plans to engage in REC transactions and apply RECs toward future compliance. The Commission will approve, reject, or modify the Optimized RNS and the IOU will act accordingly.

particular IOU and therefore, should not be compared to all REC contracts executed over the prior 12 months.²²

The April 2014 Staff Proposal requires that the procurement come from actual need based on the RPS net short and procurement authorization approved in the IOU's most recently approved RPS procurement plan.²³ ORA supports the reasoning and process in the April 2014 Staff Proposal as it will help guard against excessive costs due to over-procurement. This process would require the IOU to show the economic value of unbundled RECs the IOU wishes to buy, will limit the IOU's ability to excessively bank²⁴ its RECs, and will provide a transparent comparison between the contract price²⁵ of an unbundled REC²⁶ with other unbundled REC contracts.

²² SDG&E Opening Comments, p. 20.

²³ April 2014 Staff Proposal, p. 32.

²⁴ Banking refers to the ability of obligated load serving entity to apply RECs purchased in a given compliance period in excess of their RPS obligations in that period to future compliance periods.

²⁵ The April 2014 Staff Proposal requires that the REC contract's price reasonableness will be assessed relative to the shortlisted unbundled REC bids from the most recent annual RPS Solicitation and RFO and all unbundled REC contracts that were executed in the 12 months, with a minimum of two, prior to contract execution, p. 32

²⁶ D.06-10-019 adopted definitions to "unbundled RECs" and "tradable RECs." Under an unbundled REC regime, claim over the renewable attributes of energy produced by eligible renewable technologies can be transferred from the renewable generator to one LSE while the energy is delivered to another. However, once this transfer occurs, claim over the attributes cannot be resold. In contrast, under a tradable REC regime, although the concept of selling the energy and claim over the attributes to different parties remains intact, RECs may be transferred from the renewable generator to any third party, not just obligated LSEs. In addition, these attributes can be resold subsequent to the initial sale.

III. CONCLUSION

ORA recommends that the Commission adopt the April 2014 Staff Proposal to reform RPS Procurement Review Process consistent with ORA's recommendations in opening and these reply comments.

Respectfully submitted,

/s/ DIANA L. LEE
DIANA L. LEE

Attorney for
The Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone (415) 703-4342
Facsimile: (415) 703-4432
Email: Diana.Lee@cpuc.ca.gov

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VERIFICATION

I, Diana L. Lee, am an attorney for the Office of Ratepayer, and am authorized to make this verification on the organization's behalf. I have read the

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filed on May 28, 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 is true and correct.

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

/s/ DIANA L. LEE
DIANA L. LEE