

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
ON THE SECOND ASSIGNED COMMISSIONER'S RULING
ON RPS PROCUREMENT REFORM PROPOSALS**

November 20, 2012

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals issued in this rulemaking on October 5, 2012 ("Second ACR"). These Comments are timely filed and served pursuant to the Second ACR and the Administrative Law Judge's (ALJ's) Ruling sent electronically to the service list in R.11-0-005 on November 5, 2012, extending the due date for these comments to November 20, 2012.

**I.
MEANINGFUL RPS PROCUREMENT REFORM BEGINS
WITH LONG OVERDUE INTEGRATION OF RENEWABLES
PROCUREMENT AND LONG TERM PROCUREMENT PLANNING.**

A. There Is an Urgent Need to Align and Integrate Renewables Procurement with Long Term Procurement Planning, Especially to Meet the Commission's Loading Ordering and the State's Clean Energy Goals.

Despite a long promised alignment and integration of renewables procurement and the Commission's Long Term Procurement Planning (LTPP) process, the Commission has yet to take this step and in the Second ACR defers action again.¹ Specifically, the Second ACR states, that, while it is the Commission's goal to ensure that "each RPS contract it approves adheres to

¹ Second ACR, at p. 5, n. 5.

the long-term goals of the state of California to meet its energy needs,” it postpones to “*a later time* how to better align RPS procurement authorization with LTPP need determination.”²

If the Commission’s “goal” is to ensure RPS procurement “adheres” to California’s “long-term goals” for meeting energy needs, the Commission’s continuing failure to align the LTPP and RPS is inexplicable. Instead, the Commission must seize this opportunity to make RPS procurement reforms that align and integrate the renewable and “general” long term procurement planning processes. To do otherwise, would preclude renewables, as the *first*, preferred generation resource in the Commission’s Loading Order, from meeting long term needs as they are being defined today and, in turn, cause an over-reliance on fossil resources to the disadvantage of ratepayers and State environmental and clean energy policies.

Thus, while the intent of the Second ACR is to streamline the RPS contract review process, such streamlining appears targeted toward simplifying the Commission’s *administration* of the RPS Program, rather than furthering a broader vision of renewables procurement. In this regard, all of the Second ACR’s proposed “standards of review,” no matter what the contract type, start from the position of *limiting* all renewables procurement to utility RPS “net short positions” effectively setting a 33% *ceiling* on renewables procurement, an outcome that also seems to result from Decision (D.) 12-11-016 (2012 RPS Plans).³

This approach, however, inappropriately restricts reliance on resources that have a larger role to play, beyond a compliance target, especially in avoiding unnecessary development of fossil-fueled electric generation and reducing greenhouse gas (GHG) emissions.⁴ Governor

²² *Id.*, at p. 5 and p. 5, n.5; emphasis added.

³ D.12-11-016, at pp. 4-5, 53-57 (allowing Southern California Edison Company (SCE) to forego a 2012 RPS Solicitation, but then also prohibiting SCE from bilateral contracting for renewables procurement, based on SCE’s assessment of its “net short” position on renewables procurement relative to a 33% RPS only).

⁴ D.07-12-052, at p. 2; emphasis added.

Brown clearly understood this role for renewables when, in signing Senate Bill (SB) 1X 2 (33% RPS by 2020), he stated:

“While reaching a 33% renewables portfolio standard will be an important milestone, it is *really just a starting point - a floor, not a ceiling*. Our state has enormous renewable resource potential. I would like to see us pursue even more far-reaching targets. With the amount of renewable resources coming on-line, and prices dropping, I think 40%, at reasonable cost, is well within our grasp in the near future.”⁵

It is, therefore, important to understand what the State’s *overall energy needs* are expected to be from this date forward, not just an RPS-compliance “net short position,” to ensure that renewables will be considered and procured first among generation resource options as intended by the Loading Order. In fact, dating back to 2005, the Commission concluded that, while the *annual* RPS-specific procurement plans required by PU Code Section 399.14 would continue to be filed and considered in the RPS rulemakings, “*long-term RPS planning*” is to be addressed in the “*long term procurement planning component of R.04-04-003 [LTPP] or its successor, as contemplated by §399.14(a)*.”⁶ This directive has *not* been changed in any subsequent decision issued on RPS-specific procurement plans⁷ or in the RPS statute, other than a change in the section number. Thus, the instruction originally in Section 399.14(a) has been maintained by SB 2 (1X) in PU Code Section 399.13(a)(1):

“The commission shall direct each electrical corporation to annually prepare a renewable energy procurement plan that includes the matter in paragraph (5), 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.**”

⁵ Governor’s Signing Statement for SB 1X 2 (4/12/11) (http://gov.ca.gov/docs/SBX1_0002_Signing_Message.pdf); emphasis added.

⁶ D.05-07-039, at p. 29; emphasis added. See also, D.06-05-039, at p. 6.

⁷ See, e.g., D.06-05-039, at p. 7; D.07-02-011, at p. 6; D.08-02-008, at pp. 5-6.

Despite the fact that this statutory language has been in effect for years, the Commission has still failed to integrate RPS and LTPP planning to the detriment of ratepayers and Commission and State environmental and energy policies. This inaction also conflicts with the Commission’s express recognition that, in meeting a long-term need, *beyond* the existence of a 20% or a 33% RPS, “[o]nce a utility captures the targeted EE [energy efficiency] and DR [demand response] opportunities, *the utility is to procure renewable generation to the fullest extent possible.*”⁸ On this point, the Commission has concluded:

“[W]e will require that subsequent LTPP filings for our regulated utilities not only conform to the energy and environmental policies in place, but aim for even higher levels of performance. We expect the utilities to show a commitment to not only meet the targets set by the Legislature and this Commission but to try on their own to integrate research and technology to strive to improve the environment, without compromising reliability or our obligation to ratepayers.”⁹

At the beginning of this year, the Commission re-confirmed its commitment to the Loading Order in D.12-01-033 (R.10-05-006 (LTPP)). In that order, the Commission determined that the Energy Action Plan II “*requires* the utilities to procure resources in a specific order” with “invest[ment] first in energy efficiency and demand-side resources, followed by renewable resources, and *only then* in clean conventional electricity supply.”¹⁰ Further, “[u]tility procurement *must comply* with the Commission’s established loading order,” the “loading order applies to *all* utility procurement.”¹¹ In addition, “the utility obligation to follow the loading order is *ongoing*” *regardless of whether a “target” has been “hit” for a preferred resource to “satisfy other obligations of the utility.*”¹²

⁸ D.07-12-052, at p. 12; emphasis added.

⁹ *Id.*, at pp. 4, 7.

¹⁰ D.12-01-033, at p. 17, citing Energy Action Plan 2008 Update, at 1; emphasis added.

¹¹ D.12-01-033, at p. 20; emphasis added

¹² D.12-01-033, at p. 20; Finding of Fact 7, at p. 46, Ordering Paragraph 4, at p. 51; emphasis added.

This language, coupled with the Governor’s signing statement, clearly means that reaching a 33% RPS is *not* the end point for, nor does it set a limit on, procuring renewables, especially as a preferred resource in the Commission’s Loading Order. However, by continuing to segregate and address *all renewables procurement* within this proceeding – with *no* alignment with LTPP needs or Loading Order “compliance” – Commission directions here serve to curtail renewables procurement when in fact it should be considered on an “ongoing” basis to meet any and all identified need.

Dating back to 2007, CEERT, among other parties, has routinely expressed the concern that the IOUs’ reliance on fossil resources would leave “no room in an IOUs’ portfolio for other resources,”¹³ in particular, those higher on the loading order that would also reduce GHG emissions. These views have found continued and new voice – from residential and large ratepayer advocates to environmentalists to industry – in the *currently pending* LTPP Rulemaking (R.) 12-03-014. A widespread concern shared by these parties is that, without the Commission taking steps to ensure that preferred resources are fairly and appropriately considered in IOU request for offers (RFOs) or in planning scenarios, the result will be an all gas’ forecast and future or will require the IOUs to embark on a procurement that would exclude preferred resources.¹⁴ In particular, action by the Commission is required to avoid an LCR “need” resulting in over-procurement of fossil resources or crowding out of preferred resources.¹⁵

¹³ *Id.*, at p. 6.

¹⁴ See, R.12-03-014 (LTPP) CEERT Local Reliability Track 1 Opening and Reply Briefs for citations to testimony and briefs of Division of Ratepayer Advocates (DRA), California Large Energy Consumers Association (CLECA), California Environmental Justice Alliance (CEJA), Natural Resources Defense Council (NRDC), EnerNOC, Inc., among others.

¹⁵ R.12-03-014 (LTPP) CEERT Opening Brief, at p. 30.

In response, in the evidentiary hearings held and briefs filed in the Local Reliability Track 1 of that LTPP, this broad group of stakeholders have urged the Commission to ensure that “preferred resources” in the Loading Order are fairly and appropriately considered in reducing *and* meeting local capacity reliability (LCR) needs that may be identified in Southern California Edison Company’s (SCE’s) service territory.¹⁶ To further investigate the potential for such preferred resources, including energy efficiency, demand response, and renewable generation, to meet that need and be fairly included in utility solicitations, the Commission has also held a Workshop on this topic in September 2012 and solicited comments.¹⁷

With a decision expected by year’s end in Track 1 of R.12-03-014, it may well be that a resource need will be identified for SCE for which “preferred resources,” including renewables, will and should play a role in meeting that need. Driven by expected retirements of Once-Through-Cooling (OTC) generation in the near and longer term in Southern California, coupled with the ongoing shut-down of San Onofre Nuclear Generating Station (SONGS) units, the California Independent System Operator (CAISO) has “identified” a local reliability “need for approximately 2400 MW of replacement OTC generation” in the Southern California Edison Company (SCE) service territory alone.¹⁸ To foreclose SCE, as an example, from procurement that will enable it to rely on renewable generation for that purpose is short-sighted and at odds with broader state and Commission policy. Yet, that will be the outcome to the extent that this proceeding (RPS) continues to be disengaged from the LTPP, and further serves to limit renewables procurement to RPS “net short positions” or, in the case of SCE, based on the

¹⁶ See, e.g., R.12-03-014 (LTPP) CEERT Track 1 Opening and Reply Briefs. SDG&E’s LCR need is being addressed in the separate Application (A.) 11-05-023.

¹⁷ This Workshop was held jointly in R.12-03-014 (LTPP) and R.10-02-007 (Energy Storage) on September 7, 2012. Comments were solicited and filed in response to an ALJ’s Ruling issued in R.12-03-014 on September 14, 2012.

¹⁸ R.12-03-014 (LTPP) Exhibit (Ex.) ISO-01, at p. 17 (CAISO (Sparks)); Ex. ISO-04, at p. 7 (CAISO (Rothleder)); Reporter’s Transcript (RT) at 112-113 (CAISO (Rothleder)); CEERT Opening Brief, at pp. 13-14.

outcome of D.12-11-016, to only small facility procurement mechanisms. Thus, the RPS Procurement Reform Proposals, as currently written, whether for “expedited review” or Tier 3 PPA approval, will have no applicability to SCE, since the utility is foreclosed from any bilateral contracting and will not be holding a solicitation.

Accepting D.12-11-016 and its ordering paragraphs, including decisions reached with respect to SCE’s RPS procurement in the next year, as they stand, what is called for in addressing RPS Procurement Reform Proposals here, therefore, is to ensure that mechanisms exist and are tailored for the utilities to rely on and procure renewable resources to meet *all identified energy needs*, including those that may result from a Track 1 LTPP decision. At a time when the Commission is focused on ensuring consideration of preferred resources in meeting LCR needs, the Commission must now tailor the “RPS procurement process” to reflect the evolution in renewables development and procurement over the last 10 years and the need to authorize utility renewable procurement on an ongoing basis “fit” with their specific local and system requirements. As part of a “maturing” RPS evaluation process, the Commission should also be seeking to ensure even greater diversity in each utility’s renewable resource portfolio to avoid over-concentration of a single technology that could subject the grid to the performance limitations and attributes specific to that technology, with potential implications for integration costs and grid reliability. To that end, CEERT offers its recommendations on RPS procurement process “reforms” below.

B. CEERT’s Recommendations on Renewables Procurement Reform Focus on Fostering, Not Foreclosing, Renewables Procurement Tailored to Meet Current and Expected Local and System Needs and Load Profiles.

For the foregoing reasons, CEERT asks the Commission that it include specific changes in any “reform” of its RPS procurement process that will better meet the current and expected

energy needs of the IOU's consistent with what those needs and load profiles are likely to be and in furtherance of not only the 33% RPS, but also the Commission's Loading Order and state Climate Change and environmental policies. To that end, CEERT proposes, first, that the RPS Procurement Reform Proposals ensure that an ongoing renewable procurement mechanism is available to *all utilities* and is *not* limited by RPS "net short" positions in order to meet all energy needs, and, second, "preferences" be part of the least cost, best fit (LCBF) evaluation of resources that will ensure the best match of attributes between resources procured and a utility's current *overall* energy need, including that needed to maintain grid reliability.

First, as to an ongoing procurement mechanism, in the last LTPP cycle (R.10-05-006), SCE proposed, and CEERT supported, the inclusion of an RPS-eligible product in its pre-approved Assembly Bill (AB) 57 bundled procurement authority.¹⁹ CEERT agreed with SCE that its "proposal for authority to enter into short-term (5 years or less) renewable contracts," based on a robust pre-approval process, "brings greater flexibility to higher Preferred Loading Order resources and removes certain barriers to the procurement of renewables, which do not exist for non-renewable generation."²⁰ SCE's proposal was aimed at ensuring compliance with the Loading Order as well as contributions "to a reduction in GHG emissions from SCE's bundled customer portfolio."²¹ From CEERT's perspective, and for these reasons, this proposed integration of renewables into LTPP planning and procurement was a long overdue, welcomed development that would also avoid "disadvantaging a 'preferred' resource."²²

Given that the Second ACR is re-considering its current ineffective, expedited review process for RPS contracts of 5 years and less, it is now also clear that the LTPP procurement

¹⁹ R.10-05-006 (LTPP Track II), Exhibit (Ex.) 207 (SCE (Cushnie)), at pp. 2, 6.

²⁰ R.10-05-006 (LTPP Track II), Ex. 207 (SCE (Marelli)), at p. 17.

²¹ R.10-05-006 (LTPP Track II), Exhibit (Ex.) 207 (SCE (Cushnie)), at pp. 2, 6.

²² R.10-05-006 (LTPP Track II), Ex. 1100 (CEERT (Ferguson)), at pp. II-4 – II-5.

product contract term of 5 years is *no longer seen* as inappropriate for RPS-compliant procurement and could move the State in the direction of having renewable generation serve as the default long-term and short-term generation procurement option, as intended by the Loading Order. As discussed further below, the reason that the existing “expedited” review for contracts of five years and less has only “rarely been used and no contracts have been approved pursuant to it,” as the Second ACR confirms,²³ was summed up in PG&E’s reply testimony PG&E in R.10-05-006 (Track II) as follows: “[T]he approval standard for short-term renewables purchases is much more onerous than the standard for conventional, fossil-fired procurement of a similar term.”²⁴

Disappointingly, D.12-01-033 issued in R.10-05-006 (LTPP) earlier this year declined to rule on the merits of SCE’s renewables procurement product proposal.²⁵ Instead, the Commission concluded that this “issue is more appropriately addressed in the Commission’s RPS proceeding (R.11-05-005), where the Commission is comprehensively examining issues relating to the implementation of the recently amended RPS statute, including contracting issues.”²⁶

Tossing the “issue” of renewables procurement back and forth between RPS and LTPP proceedings is precisely the outcome that the Commission should and must avoid. However, since the Commission’s most recent LTPP pronouncement puts the question of ongoing renewables procurement to meet not only RPS targets, but also the Commission’s Loading Order and other state energy and environmental policies squarely in this proceeding, the Second ACR’s

²³ Second ACR, at p. 11.

²⁴ R10-05-006 (LTPP (Bundled Track II)), Ex. 103 (PG&E (Buller, et al.)), at p. IV-6.

²⁵ D.12-01-033, at p. 40.

²⁶ Id.

inquiry into RPS Procurement Reform Proposals is *now the best time and place to make this much needed connection between LTPP and RPS proceedings.*

To that end, CEERT strongly recommends that the Commission include, as part of its reform proposals, one that will allow the IOUs to continuously procure renewables to meet *all* energy needs. At this time, as an example, ensuring that SCE, along with PG&E and SDG&E, can take advantage of 5-year renewable procurement opportunities regardless of whether a solicitation has been held or not is imperative. Renewable resources that may arise in that context may well result from existing PPAs or expiring QF contracts and may represent high value (project viability) and low cost (existing plant and site) for ratepayers and should be permitted through bilateral negotiations or even a targeted solicitation, especially if the “attributes” sought best match utility local or grid reliability needs. Such an ongoing procurement mechanism – that is not restricted by RPS net short positions, facility size, or inappropriate, reduced price benchmarks – is particularly appropriate for many reasons, not the least of which is as a hedge against optimistic projections of a lower contract failure rate or lower growth rate not materializing. It will also serve to reflect an opinion offered by SDG&E as part of its 2012 Plans: “The market for renewable energy is dynamic; multiple factors can impact project development and SDG&E’s attainment of RPS goals.”²⁷

Further, this work may well dovetail with the Commission’s *current* examination in R.12-03-014 – through the September Workshop and comments – of the role that can and should be played by preferred resources, including renewables, in meeting identified LTPP need. CEERT is prepared to work with other stakeholders to develop prerequisites for this procurement that either support pre-approval or fast-track authorization through a Tier 1 advice letter. While the “expedited review” process proposed by the Second ACR moves in the direction of a Tier 1

²⁷ SDG&E 2012 RPS Plan, at p. 11.

advice letter approval for 5 year-term procurement, it also puts the brakes on the usefulness of that process by imposing upfront restrictions – such as limiting procurement quantities to net short positions, imposing price reductions, or requiring a solicitation – that undermine its usefulness.

With regard to consideration of resource attributes, and, as to CEERT’s second reform proposal, CEERT believes that the IOUs’ evaluation process (i.e., LCBF) should permit “preferences” for those renewable resources with attributes that match specific energy (i.e., grid reliability or flexibility) needs or changing or evolving load profiles. In D.12-11-016, the Commission specifically approved the use of RPS solicitation “preferences,” including project location, delivery start dates, term lengths, and even specific portfolio content categories.²⁸ The Commission concluded that it is “reasonable” and “not contrary to the requirements of the RPS Program” for “the utilities to solicit offers based on the various preferences set forth in their 2012 RPS Procurement Plans.”²⁹ Further, the Commission distinguished these “preferences” from a “preference” for “specific types of renewable generation”(“carve-outs”), which the Commission has declined to authorize, on the grounds that the permitted preferences are “criteria established by the utility as a means of meeting unmet renewable generation needs and legal requirements under the RPS Program.”³⁰

CEERT questions the merits of this latter distinction as being one without a difference, since a specific technology may be one that *is* best suited to meet an “unmet renewable generation need.” Nevertheless, D.12-11-016 does not prohibit a preference for resources that meet any and all “generation” needs of the utilities, including those required to address grid reliability or flexibility. Given that these are pre-eminent concerns today in the operation of the

²⁸ D.12-11-016, at pp. 21-23.

²⁹ *Id.*, at p. 23.

³⁰ *Id.*, at p. 23.

electric grid, in both the LTPP and Resource Adequacy (RA) proceedings (R.12-03-014 and R.11-10-023), it certainly makes sense to imbed preferences for attributes that meet both reliability and flexibility needs into renewables procurement, whether to meet an “unmet” RPS need or an LTPP need.

To that end, in any revision to the LCBF evaluation method, CEERT urges that preferences for renewable resources with attributes designed to match a utility’s general energy needs and load profile should be part of the “best-fit” criteria. While the legislative amendments in SB 2 (1X) addressed in Section 5.1 of the Second ACR (PU Code §399.14(a)(4)) focus again on “cost” considerations, the “best fit” of a resource that actually matches or adds value to the utility’s local or system need is of equal importance and must be balanced against any cost consideration. Just buying the cheapest energy does not necessarily equate to resource solutions that address a utility’s current or expected short- and long-term local, system, or environmental needs.

II. SECOND ACR RPS PROCUREMENT REFORM PROPOSALS

A. Shortlist Approval (Second ACR Section 4.1)

The Second ACR proposes that the IOUs’ shortlists of RPS bids and accompanying Independent Evaluator (IE) report should be submitted by “Tier 3” versus the current “Tier 2” advice letter. The Second ACR reasons that “more emphasis on the review of the shortlist,” which would ultimately streamline approval of selected projects, would result from a process (Tier 3) that would require a vote of the full Commission through issuance of a final Resolution, rather than simply review and approval by a letter from the Energy Division (Tier 2).

Although not stated, CEERT assumes that, by suggesting the Resolution process (Tier 3) for approval of the shortlist, the Second ACR has concluded that enhanced review will result

from parties having more opportunity to comment in such a process (first, as to the Advice Letter, and, second, in response to a Draft Resolution), and each Commissioner having the opportunity to review and weigh in on the proposed outcome publicly. While CEERT supports meaningful input, it is hard to know how much of the information that would be provided either in a Tier 3 advice letter or a Resolution would be any more transparent than the current Tier 2 advice letters to those without access to “confidential” data or analysis. Thus, the merits of this proposal appear to turn on the extent to which the Commissioners believe that this process will benefit them in future votes on individual projects.

However, because this proposal also appears to be a condition precedent to the reform proposal identified in the Second ACR Section 4.2, CEERT does not believe that the Second ACR has offered a sufficient foundation that this elevated review process for the short lists really provides additional assurance of the merits of individual contracts. CEERT reserves the right to provide further input on this topic in its reply comments to positions taken by other parties.

B. RPS Contract Execution and Approval Deadlines (Second ACR Section 4.2)

As noted above, this proposal is tied to the proposal to elevate the review process for the IOU shortlists to a Tier 3 Advice Letter. Thus, apparently assuming that more Commissioner attention to the short lists will encourage or support faster contracting, the Second ACR proposes that “RPS contracts be executed within one year after the approval of an IOU’s shortlist and filed with the Commission for approval within one month from the execution date of the contract.”³¹ The Second ACR also notes that this proposal is related to an earlier one (April ACR) limiting a project’s status on an IOU’s RPS shortlist to 12 months.

In response to the related proposal, CEERT agreed that “reliance on ‘stale’ bids is not beneficial,” and, instead, shared SCE’s and PG&E’s concerns “that ‘a firm expiration date serves

³¹ Second ACR, at p. 10.

as an unnecessary constraint on the bidding process’ and could delay execution of PPAs or impose an unnecessary burden on bidders.”³² It is difficult to determine how elevated review of a short list would alter or cure these concerns. The Commission, therefore, instead of simply adopting a highly prescriptive timetable, should be examining other options for encouraging or incentivizing both parties to complete negotiations on a timely basis, rather than potentially providing leverage to the utility, through a cut-off date, to force an agreement that may in fact disadvantage the developer and ratepayers. CEERT looks forward to reviewing the responses or related proposals by other parties and providing additional input in its reply comments.

C. Expedited RPS Contract Review (Second ACR Section 4.3)

By D.09-06-050, as noted in the Second ACR, the Commission adopted an “expedited” review process for “short-term RPS contracts based on forward market prices for conventional energy contracts.”³³ CEERT was among other parties, including San Diego Gas and Electric Company (SDG&E) and Green Power Institute (GPI), that took great exception to the “process” adopted in D.09-06-050. In fact, CEERT has a *still pending* and highly relevant Application for Rehearing of D.09-06-050, filed in July 2009, challenging the lawfulness of the approach taken in that decision. Among other things, D.09-06-050 invoked pricing and process constraints on these short term contracts that had no basis in the law and certainly were not ones predicated to result in this process being used at all.

It is certainly no surprise, therefore, that, as the Second ACR admits, “this expedited process has rarely been used and no contracts have been approved pursuant to it.”³⁴ As explained in Section I. above, such short term contracts (up to 5 years) have value to capture

³² CEERT Comments on 2012 RPS Plans (June 22, 2012), at p. 29, citing SCE Comments on New Proposals, at p. 8; PG&E Public 2012 RPS Plan, at pp. 67-68.

³³ Second ACR, at p. 11.

³⁴ Second ACR, at p. 11.

fleeting opportunities in the renewable market or taking advantage of existing, viable projects, especially those with expiring contracts. Further, as to term, CEERT continues to believe that including a 5-year renewable procurement product in the list of pre-authorized LTPP bundled procurement products would be an ideal means of aligning RPS and LTPP procurement and equalizing the treatment of renewable and fossil resources in that context. Such a process would also provide a “rolling” or continuous basis for renewables procurement in furtherance of the “Loading Order.”

While the “new” proposed review of contracts less than 5 years does appear more closely “aligned” with preauthorized LTPP bundled procurement products (using a Tier 1 advice letter approval process), the “proposed prerequisites” (“standards of review”) applicable to this process continue to depend on “competitive solicitations” or “bilateral contracting” to which SCE is now foreclosed.³⁵ Contract amount also continues to be limited to the “RPS net short approved in IOU’s most recently approved RPS procurement plan,”³⁶ again creating a ceiling on RPs procurement.

Of further concern is that this “proposal” continues in place a price constraint – “equivalent or better net market value” – which, like the “price benchmarks” adopted in D.09-06-050 for the current expedited process serves to devalue renewables procurement of this contract length, without any basis in fact or law. The flaws with this approach have been detailed in CEERT’s Application for Rehearing of D.09-06-050 filed on July 20, 2009, at pages 2 through 10. CEERT also notes that it was not alone in challenging the unsupported, restrictive “price benchmarks” for procurement of 5 years or less adopted in D.09-06-050 and the failure of

³⁵ D.12-11-016, at pp. 53-57.

³⁶ Second ACR, Table 1, at pp. 13-14.

the adopted process to reflect a value for the RECs associated with this energy or consider the “extremely dynamic” nature of the short term market.³⁷

CEERT notes that the point of including a 5-year renewable contract in the list of pre-authorized LTPP bundled procurement products is not only to meet RPS targets (or an “RPS net short”), but to allow the utility to avail itself of renewable generation opportunities to comply with the Loading Order, AB 32 emissions reductions, and other state and *local* environmental policies or criteria. From CEERT’s perspective, the Second ACR’s consideration of RPS Procurement Reform Proposals *should offer*, and, pursuant to D.12-01-033, was intended to consider, a procurement mechanism that will finally create a nexus between RPS and LTPP procurement processes in a manner that would account for all other applicable Commission and state energy policies.

In these circumstances, with the addition of preferences for attributes predicated to meet a utility’s system and local energy needs, including procurement to address grid reliability and flexibility, the Commission should authorize an expedited 5-year procurement mechanism available on *an ongoing basis to all of the IOUs, including bilateral contracting, to be used as and when needed to meet local or system needs or reduce GHG emissions, regardless of whether an RPS solicitation has been held or whether an “RPS net short” has been exceeded.* This broader reliance on renewables generation is completely consistent with the Governor’s own intention that a 33% RPS was not to be a ceiling or cap on renewables procurement.

D. Tier 3 Advice Letter Review (Second ACR Section 4.4)

CEERT’s overarching objections to the Commission approving only a “generation quantity” limited to the IOU’s “RPS Net Short” applies to the Standards of Review proposed for

³⁷ R.06-02-012, SDG&E Comments on Short-Term RPS Criteria, at pp. 4, 5-8; see also, SDG&E Further Comments on Short Term Pricing Benchmark Proposals (9/24/07), at p. 2; GPI Further Comments (9/24/07), at pp. 1-2.

the Tier 3 PPAs in the same manner as it does for the expedited review addressed above. Such a rigid limitation, at the very outset, of any renewable procurement by the IOUs simply does *not* further this State’s energy policies and, again, reflects a “commitment” by the Commission to 33% as an end point to all renewables procurement. CEERT urges the Commission to remove this “need authorization” from all of its Standards of Review.

Thus, in response specifically to Question 8, at page 20, the requirement for contracts to be consistent with an IOU’s net short approved in the most recent Procurement Plan should be stricken from all of the Tables in this section and in Section 4.3 (Tables 1 through 5). In fact, it is certainly disappointing that, even in the case of “non-standard” PPAs, this restriction is imposed and, again, prevents renewable generation from being procured by IOUs to meet its broader energy needs, consistent with the Loading Order. CEERT otherwise reserves the right to address this issue further in reply comments.

E. Unbundled RECs Review (Second ACR Section 4.5)

The concerns expressed throughout this comments regarding the intention of the Commission to limit renewable procurement also apply here. CEERT otherwise reserves the right to address this issue further in reply comments.

F. IE Report Evaluation Requirements (Second ACR Section 4.6)

In response to the proposals made with respect to IE Reports in the April ACR, on which the proposal contained in the Second ACR “builds,”³⁸ CEERT has the same reservations that it expressed in its comments on the April ACR. Namely, the Second ACR has not addressed whether and to what extent this proposal may be unnecessarily duplicative or could cause unnecessary delay in the approval process. CEERT otherwise reserves the right to address this issue further in reply comments.

³⁸ Second ACR, at p. 36.

G. Section 399.13(a)(4) LCBF Requirements (Second ACR Section 5.1)

At this time, and reserving the right to respond further in reply comments, CEERT's response to any revision to the LCBF criteria is included in Section I. B. above and largely goes to Question 28: "What additional topics, if any should be part of the LCBF process?"³⁹ CEERT urges that the Commission ensure that every IOU's "LCBF process" and procurement evaluation honor and effectively consider "best fit," not just lowest cost, resources based on the IOU's overall system and local energy needs.

This "best fit" should also not be constrained by a presently identified "net short" position or simply complying with a 33% RPS target. For the many reasons identified in Section I. above, renewables procurement must, and is intended, to play a much broader role in meeting utility energy needs. For that reason, criteria defining a utility's "best fit" should include attributes that have highest value to the utility in terms of grid reliability, resource flexibility, and load profiles. To the extent that further work is required, CEERT is prepared to join with other stakeholders to establish these criteria in a public, transparent manner.

In terms of inclusion of "integration costs" in any LCBF evaluation, CEERT's position on this issue has largely been adopted by the Commission in D.12-11-016. Namely, the Commission rejected PG&E's and SCE's request to use "non-zero" integration adders in the absence of the public development and review of such adders based on system-wide impacts.⁴⁰ D.12-11-016 directs the parties to participation in proceedings, such as R.12-03-014 (LTPP), and, to the extent "a robust and meaningful integration cost adder" is developed in one of these "public processes," the utility can then seek authority to use it in its LCBF evaluation.⁴¹

³⁹ Second ACR, at p. 38.

⁴⁰ D.12-11-016, at pp. 27, 29.

⁴¹ *Id.*, at p. 29.

H. Elimination of “Green Attributes” STC (Second ACR Section 5.2)

Section 5.2 of the Second ACR proposes to remove the definition of “green attributes” from non-modifiable standard term and condition (STC) 2.⁴² No foundation for proposing this “reform” is provided by the Second ACR. Instead, questions are merely posed as to the necessity or “usefulness” of this definition or STC 2, with reference made to a long list of legislative enactments with no stated tie to this definition.⁴³

Without more, this “reform” to remove STC 2 or “green attributes” as a non-modifiable term of an RPS PPA is simply not adequately supported and requires further clarification as to the purpose for doing so now. From CEERT’s perspective, the language of STC 2 remains a key part of the understanding between the contracting parties as to the product and rights being transferred, and no basis for change to that term or its status has been presented at this time.

III. CONCLUSION

CEERT welcomes this opportunity to comment on the Second ACR’s RPS Procurement Reform Proposals. CEERT urges the Commission to give full consideration to and adopt CEERT’s recommendations herein, especially to ensure that renewables procurement is undertaken consistent with the Loading Order and all applicable State policies.

Respectfully submitted,

November 20, 2012

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⁴² Second ACR, at pp. 38-39.

⁴³ *Id.*, at p. 39.

VERIFICATION

(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Comments of the Center for Energy Efficiency and Renewable Technologies on the Second ACR on RPS Procurement Reform Proposals, have been prepared and read by me and 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 and executed on November 20, 2012, at San Francisco, California.

Respectfully submitted,

/s/ SARA STECK MYERS

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