

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024

**ASSIGNED COMMISSIONER'S RULING
SPECIFYING CRITERIA FOR INTERIM RENEWABLE ENERGY SOLICITATIONS**

1. Summary

This ruling outlines the parameters for any procurement of renewable resources by any of the investor-owned utilities prior to full implementation of the Renewable Portfolio Standard program (RPS). Some utilities may wish to execute contracts for renewable generation prior to full development of the criteria and rules for a solicitation under the RPS, based on current market conditions. This ruling gives guidance and parameters for utilities wishing to consider renewable purchases in advance of full RPS implementation, without prejudging the outcome of issues still to be decided by the Commission.

2. General Process Requirements

Any utility wishing to procure renewable generation prior to full RPS implementation must still abide by the terms of our first RPS implementation decision (D.03-06-071). In addition, utilities may engage in bilateral negotiations or may issue a competitive solicitation (request for offer (RFO)) to receive bids. However, any issuance of an interim RFO by a utility does not constitute filing of an RPS procurement plan under the terms of D.03-06-071.

Any utility obligated under the RPS may issue an RFO on its own direction and will not be penalized if it chooses not to do so. As stipulated in D.03-06-071, the utilities are allowed to "roll over" any under-procurement in 2003 into the Annual Procurement Target for 2004 without penalty. A decision not to issue an RFO prior to full RPS implementation will not waive this immunity. Conversely, any contract signed as a result of a bilateral negotiation or an RFO, and approved by the Commission, should count toward the APT.

Whether a utility chooses to engage in bilateral negotiations or issue an RFO prior to full RPS implementation, any renewable procurement proposed to the Commission during this period should meet the criteria given in this ruling.

3. Criteria for Interim Procurement

Any renewable procurement in this interim period (regardless of whether it is conducted through an RFO or bilateral negotiation) must not anticipate the use of any Supplemental Energy Payments to be awarded by the CEC pursuant to Public Utilities Code Sec. 383.5(d). Projects that have previously won an award from an auction conducted by the CEC (public goods funds which were collected pursuant to SB 90) may bid or negotiate and still remain eligible to receive their award once the project begins producing electricity pursuant to a Power Purchase Agreement.

In addition, any solicitation also must not anticipate the creation of the Market Price Referent (MPR) under development in the RPS process. Internal market benchmarks developed by the utility for bid evaluation are appropriate for preliminary evaluation, but should not be made public in the RFO or at any point in the solicitation process, and should not be referred to as the MPR. Any internal benchmarks and details of their development should be provided, however, to the Procurement Review Group (PRG) when the Preliminary Evaluation of submitted bids is performed. In addition, this information should be provided to the Commission when any proposed contracts are ultimately submitted for approval.

Any RFO must clearly stipulate up front precisely how the utility will calculate adders for transmission upgrades and integration costs, and how the utility will assign capacity values and payments to as-available resources. Bidders should have this information available to them before preparing their bids, and the PRG should be given an opportunity (one week minimum) to comment on the methodologies for deriving these adders. These methodologies do not prejudice the development of these factors underway in the RPS phase of this proceeding. However, they should draw as much as possible on the guidance given in D.03-06-071 and work being done in the CEC's Integration Study.

Each utility issuing a solicitation should stipulate in its RFO, and in subsequent negotiations with bidders, that any funds received by bidders from the federal Production Tax Credit (PTC) beginning after the final bids are submitted, shall be passed through entirely to ratepayers via a reduction in the cents per kWh price of the contract. This condition should also apply to any bilateral contracts proposed outside of a competitive solicitation process. This stipulation is necessary given the present uncertainty surrounding renewal of the PTC in 2004.

4. Process for Contract Review and Approval

Using its discretion, the utility will provide its preferred selection of contracts (through bilateral negotiations or a competitive solicitation) to its PRG and the Commission for review, describing in full the basis for selection. The PRG should be given at least ten working days to analyze the Preliminary Evaluation and at least ten working days to analyze the Short List of proposed contracts.

Proposed contracts, after PRG review, may be submitted for Commission approval via Advice Letter. However, any Advice Letter submitted should follow general Commission process for Advice Letter review and should not use the expedited procedures and schedules adopted in D.02-08-071.

Therefore, **IT IS RULED** that:

1. Any utility wishing to solicit renewable generation proposals prior to full implementation of the Renewable Portfolio Standard (RPS) program, whether through bilateral negotiations or competitive solicitations, shall abide by the terms outlined in this Ruling.

2. Any utility proposing to execute a contract for renewable generation procurement prior to full RPS implementation may submit that contract for Commission approval via Advice Letter.

Dated August 13, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

