

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Continue Electric
Integrated Resource Planning and Related
Procurement Processes

Rulemaking 20-05-003
(Filed October 5, 2023)

**OPENING COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL ON
ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION DETERMINING NEED
FOR CENTRALIZED PROCUREMENT OF LONG LEAD-TIME RESOURCES**

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I. Introduction and Summary

The Natural Resources Defense Council (NRDC) submits these comments on Administrative Law Judge’s Proposed Decision Determining Need for Centralized Procurement of Long Lead-Time Resources (henceforth known as “PD”) filed on July 19, 2024. NRDC is a non-profit organization with more than 90,000 California members who have an interest in receiving reliable and affordable energy services while reducing their environmental impact and combatting climate change.

NRDC’s recommendations are:

- 7.6 GW OSW need determination is necessary and appropriately balances costs and benefits as analyzed in the CPUC’s cost benefit analysis; the PD should recognize NRDC’s contributions on the limitations of the cost-effectiveness analysis.
- Procurement cost-containment measures are important. NRDC recommends exploring alternative contracting models to balance project realization with minimizing ratepayer impacts.
- The procurement group should include NGOs and consumer groups.

NRDC appreciates the robust effort the Commission has undertaken to establish a centralized procurement process and need determination for offshore wind (OSW) and other long lead time resources. NRDC is supportive of the 7.6 GW OSW need determination established in the PD. 7.6 GW is a level that appropriately balances the need to send a signal to the market for

infrastructure investment, yet leaves some room for competitive procurement up to the full leased area potential of 10 GW (or more) to lower prices.

NRDC is also supportive of additional measures the CPUC establishes as part of the procurement process, including not permitting LSEs to opt out, and a three-phase procurement process to occur between 2027 and 2030. NRDC further supports the Commission exploring alternative contracting models in its efforts to balance project realization with minimizing ratepayer impacts, yet note that there are potential tradeoffs to consider under different contracting models.

The PD discusses different procurement design elements, and makes some recommendations, yet holds off on establishing requirements for DWR to incorporate in its procurement process. The PD outlines a plan to establish a procurement work group that includes LSE and community group members. Other procurement review groups, including the SCE PRG, include NGO and consumer group representatives. NRDC recommends that the Commission clarify that the procurement review group established in this process can include NGO and consumer group representatives.

NRDC appreciates the Commission's thoughtful approach to centralized procurement and offers the following input.

II. Discussion

A. 7.6 GW OSW need determination is necessary and appropriately balances costs and benefits as analyzed in the CPUC's cost benefit analysis; the PD should recognize NRDC's contributions on the limitations of the cost-effectiveness analysis.

NRDC supports the 7.6 GW need determination for OSW. NRDC agrees with the Commission rationale that this level of need determination is needed "to promote economies of scale that are necessary in order to create an opportunity for these emerging technologies to compete."¹ 7.6 GW appropriately balances the need for economies of scale and a resource level that should spur infrastructure investment, while reducing the risk of leaseholders holding too much market power. A 7.6 GW OSW need determination is also supported by the Commission's cost-benefit analysis, and higher benefits would accrue if the full lifetime of the projects was

¹ PD at 4.

included in the cost-benefit analysis, rather than analyzing the costs and benefits only through 2045.

The PD cites party reply comments pointing out that “the cost-effectiveness analysis was too limited temporally to capture the full benefit of OSW over its expected useful life.”² NRDC respectfully would like to point out that NRDC initially raised this cost-benefit analysis critique in opening comments on the ruling.³

B. Procurement cost-containment measures are important. NRDC recommends exploring alternative contracting models to balance project realization with minimizing ratepayer impacts.

NRDC appreciates that the Commission has proposed several programmatic design elements intended to manage costs. In particular, NRDC supports the provision to not allow LSEs to opt out of DWR centralized procurement so that the costs are spread among as many LSEs and customers as possible. In addition, NRDC appreciates that the OSW procurement schedule is set up in three separate phases to enable learnings from earlier tranches of procurement and OSW development to drive costs down in later phases of procurement.

NRDC also appreciates the Commission’s openness to unique contracting models that may appropriately balance the realization of projects with the need to minimize costs and ratepayer impacts as much as possible. The PD in particular suggests DWR consider soliciting open-book bids, in which the contract prices are based on the actual costs plus an agreed upon rate of return, for some resources.⁴ TURN, CEERT, CALWEA, SCE support the Commission’s consideration of using open-book bidding.⁵

Design decisions for energy procurement auctions and related contracts typically create trade-offs between cost-effectiveness and risk of project non-realization as evidenced in a

² PD at 19.

³ NRDC Opening Comments at 5.

⁴ PD at 57.

⁵ PD at 33.

growing body of literature studying renewable energy auctions.^{6,7} The PD recommends one such design feature: “The Commission should recommend that DWR allow an option for bidders in each solicitation to provide open-book contract proposals”.⁸ While open-book contract structures should be considered in the procurement design, they are not without trade-offs. For example, experiences in cost-of-service regulation for electricity generation, an analogous contracting structure, suggests cost-of-service contracting can lead to inefficiencies because of a lack of incentives to reduce costs and utilize capital most efficiently.^{9,10} Despite being less cost-effective than other forms, open-book contracts may still be warranted as they potentially increase the likelihood of project realization by shifting risk away from the project developer and onto the public.¹¹

However, open-book contracts are just one of many design decisions balancing cost-effectiveness and risk of project non-realization. Recent studies have shown that other measures, such as financial pre-qualifications, and penalties for project delays have a significant effect increasing project realization.¹² Additionally, setting a confidential cost cap, a design feature mentioned in numerous comments on the ALJ’s April 26 Ruling¹³, was noticeably absent from the PD despite evidence that such a measure can contain costs and increase bid competitiveness.¹⁴

⁶ Jansen, M., Beiter, P., Riepin, I., Müsgens, F., Guajardo-Fajardo, V. J., Staffell, I., ... & Kitzing, L. (2022). Policy choices and outcomes for offshore wind auctions globally. *Energy Policy*, 167, 113000.

⁷ Matthäus, D. (2020). Designing effective auctions for renewable energy support. *Energy Policy*, 142, 111462.

⁸ PD at 70.

⁹ Joskow, P. L., & Schmalensee, R. (2024). Cost of Service Regulation of Electricity Distribution Services in the US.

¹⁰ Cicala, S. (2022). Imperfect markets versus imperfect regulation in US electricity generation. *American Economic Review*, 112(2), 409-441.

¹¹ Jansen, M., Beiter, P., Riepin, I., Müsgens, F., Guajardo-Fajardo, V. J., Staffell, I., ... & Kitzing, L. (2022). Policy choices and outcomes for offshore wind auctions globally. *Energy Policy*, 167, 113000.

¹² Matthäus, D. (2020). Designing effective auctions for renewable energy support. *Energy Policy*, 142, 111462.

¹³ PD at 28, 31; NRDC Reply Comments at 4.

¹⁴ Cleary, K., & Ratz, H. B. (2021). *Experience with Competitive Procurements and Centralized Resource Planning to Advance Clean Electricity*. Working Paper. Washington, DC: Resources for the Future. <https://www.rff.org/publications/working-papers/experience-with-competitive-procurements-and-centralized-resource-planning-to-advance-clean-electricity>.

Additionally, different processes and designs may be warranted for different OSW solicitations. In initial solicitations it may be warranted to sacrifice cost-effectiveness to increase the likelihood of project completion and development of the OSW industry. However, in future solicitations the design could be adjusted to place a greater emphasis on controlling costs while still expanding the nascent industry. This process, by which central procurement slowly shifts from prioritizing project realization to cost effectiveness, has taken place in other jurisdictions around the world.¹⁵

C. The procurement group should include NGOs and consumer groups.

Water Code Section 80820 requires the Commission and DWR “to establish a procurement group to advise the department on the procurement undertaken pursuant to this division.”¹⁶ The April 26 ALJ Ruling states, “This ruling suggests that this group be convened by and advisory to DWR and consist of non-market-participants, as well as agency staff.” The PD adds, “In addition, a number of parties recommend that DWR be encouraged to conduct outreach to and allow representation on the procurement group from community groups and Tribal Nations with vested interests in the procurement.”

NRDC agrees with the rationale for including community groups and Tribal Nations with a vested interest in the outcomes of centralized procurement in the procurement group. NRDC also urges the Commission to include NGOs and consumer groups in the list of eligible procurement group participants. NGOs and consumer groups serve on other procurement groups, including SCE’s PRG which it references in its comments, and including these distinct groups as participants will ensure that a diverse group is providing expertise to make central procurement as successful as possible.

III. Conclusion

NRDC appreciates the opportunity to comment on the PD and the Commission’s consideration of our recommendations.

¹⁵ *Op. cit.* note 6.

¹⁶ Water Code Section 80820.

Respectfully submitted,

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