

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

Order Instituting Rulemaking to Promote
Policy and Program Coordination and
Integration in Electric Utility Resource
Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**PROPOSAL OF THE CALIFORNIA BIOMASS ENERGY ALLIANCE, L.L.C.,
THE CALIFORNIA WIND ENERGY ASSOCIATION,
THE CALIFORNIA LANDFILL GAS COALITION, AND
THE SOLAR THERMAL ELECTRIC ALLIANCE
FOR A LONG-TERM QUALIFYING FACILITY POLICY**

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I. Introduction

Pursuant to the Administrative Law Judge's Ruling Requesting Proposals and Comments on the Development of a Long-Term Policy for Expiring Qualifying Facility Contracts issued on September 30, 2004 ("ALJ Ruling"), the California Biomass Energy Alliance, L.L.C. ("CBEA"),¹ the California Wind Energy Association ("CalWEA"),² the California Landfill Gas Coalition ("CLGC"),³ and the Solar Thermal Electric Alliance ("STEAL")⁴ (jointly, the "Renewables Coalition") submit their joint proposal for a long-term policy for the state's qualifying facilities ("QFs").

¹ The CBEA is a formal trade organization representing 27 of the 28 operating biomass power plants in California, as well as a number of the currently idle biomass plants. The CBEA plants are primarily located in rural areas of 19 different California counties, and provide power to all three of the State's major investor-owned electric utilities ("IOUs"). Twenty of the 28 CBEA plants are operating under the current five-year fixed price agreements. In aggregate, CBEA members' operating QF projects in California provide 570 MW to the IOUs.

² CalWEA is comprised of wind energy generators, project developers and various wind generator service providers. Many CalWEA members own and operate QF projects that sell electricity to the IOUs under existing standard offer contracts at avoided cost rates. In the aggregate, CalWEA member projects in California sell 200 MW to the IOUs.

³ The members of CLGC construct, operate, and maintain facilities to collect landfill gas and produce clean, renewable electricity. The CLGC consists of a majority of the 42 facilities in California that are renewable QFs operating under the current five-year fixed price agreements with the IOUs, and generate approximately 210 MW of environmentally sound and cost-effective energy.

⁴ STEA is comprised of the Sunray and Kramer Junction Company solar-thermal generating facilities, which provide California with over 200 MW of clean, renewable peaking capacity when California needs it the most. STEA members operate under long-term standard offer contracts with Southern California Edison Company, and operate under the current five-year fixed price agreements.

The Renewables Coalition accounts for roughly 1,180 MW of existing renewable generating capacity in California. The energy associated with this capacity is a substantial part of the IOUs' baselines for compliance with the California Renewables Portfolio Standard ("RPS") Program. Plants owned by members of the associations comprising the Renewables Coalition are QFs and hold standard offer contracts with the IOUs. The Renewables Coalition represents a broad cross-section of the renewables community, including biomass, wind, geothermal, solar-thermal and landfill-gas generating technologies.

II. Proposal

A. The Commission Should Adopt Long-Term Firm and As-Available Contracts for QFs with Expiring Contracts and for New QFs.

The Renewables Coalition has reviewed a draft of the pleading to be filed today by the California Cogeneration Council ("CCC") and supports the CCC's primary proposals. In particular, the Renewables Coalition agrees with the CCC that:

1. The Commission should adopt a long-term firm capacity contract for QFs whose contracts expire and for new QFs. The new contract should be priced using the long-run avoided cost methodology being developed in R.04-04-025 and should contain the terms outlined by the CCC in its filing (which are based largely on the Commission's existing standard offer contracts).
2. The Commission should adopt an as-available capacity contract based upon the current Standard Offer 1 ("SO1") contract, as described by the CCC. The contract should contain as-available capacity and short-run avoided cost energy pricing, both of which are under examination in R.04-04-025. The as-available capacity contract should extend for a term of up to at least 15 years, and should be terminable by the QF upon 30 days prior notice by the QF, as was the QF's option in the original SO1.
3. The firm capacity contract should be available (i) to existing QFs upon expiration of their current contracts and (ii) to new renewable QFs in each IOU's service territory at least until the IOU has met its RPS target.
4. The as-available capacity contract should remain available to renewable (and gas-fired) QFs as a back-stop to ensure that they are able to sell their output and to ensure compliance with the must-purchase obligation of the Public Utility Regulatory Policies Act of 1978 ("PURPA").

The Renewables Coalition agrees with the explanations offered by the CCC in its proceeding in support of these proposals and will not repeat them here. Rather, the Renewables Coalition expands below upon one issue raised in the CCC's pleading: the inter-relationship between the long-term QF policy and the RPS Program.

B. The Proposed Firm and As-Available QF Contracts are a Necessary Complement to the RPS Program.

The RPS Program is currently designed to yield a 20 percent penetration level by renewables in each IOU's resource portfolio, with increases of at least one percent per year until the 20 percent level is met. In order to reach the 20 percent level and to meet the one percent annual procurement targets ("APTs"), the IOUs must attract new renewable generation and must preserve their existing baseline amount of renewable resources. Thus far, the Commission has focused its RPS attention on developing IOU solicitations, mostly for new renewable resources. It is essential, however, that the Commission simultaneously take steps to ensure that the stock of existing renewable resources comprising the IOUs' baselines have viable options to sell their output to the IOUs at avoided cost prices (i.e., prices that hold the ratepayers indifferent as to whether the power was procured from QFs or other sources).

Simply put, the RPS solicitations are inadequate to address the needs of many existing renewables when their existing IOU contracts expire. First, whether or not an IOU will conduct an RPS solicitation in any given year (or over a longer time interval) is uncertain; if the IOU is not conducting a solicitation at or near a renewable QF's contract expiration, the QF may have no purchaser for its power. There are a number of reasons why an IOU may not be conducting a solicitation at any given time. For example, IOUs are only required to meet their APTs through solicitations if there are adequate Public Goods Charge ("PGC") funds available to support payments in excess of the RPS market price referent ("MPR"). The IOUs also are given unlimited flexibility to bank excess renewable procurement from one year to future years and limited flexibility to run deficits in any given year; under these mechanisms, the IOUs may justify not soliciting new contracts and instead rely on banking or deficit authority. The IOUs are also under no obligation to procure from renewables in excess of the 20 percent limit. This latter reservation is particularly relevant to QFs in Southern California Edison Company's ("Edison") territory as Edison claims to be near the 20 percent limit already. With conditions on

RPS procurement such as these, the fate of existing renewable QFs whose contracts are expiring is uncertain, at best.

Second, through its focus on encouraging new renewables development, the RPS Program could irrationally exclude existing renewables from the resource mix. Central features of the RPS Program are that (i) the IOUs solicit competing bids from potential renewable suppliers and select the lowest-cost suppliers that best fit the IOUs' resource needs and (ii) the IOUs are required to pay for power under the RPS Program only up to the MPR. New renewable projects have a distinct advantage in these solicitations over existing renewables, in that new renewables are able to obtain Supplemental Energy Payments ("SEPs") from the PGC fund to the extent that their bid prices are higher than the MPR. Existing projects are not eligible for SEPs. As such, an existing project has virtually no hope of winning in an RPS solicitation if its bid price is in excess of the MPR (as the IOU cannot be expected to pay more for power than it is entitled to recover in rates), while a new renewable project may be successful if it bids in excess of the MPR (as any overage is covered by SEPs).⁵ In fact, a new renewable can be significantly more expensive than an existing renewable and still prevail in the RPS solicitation, if both resources exceed the MPR.

Third, both new and existing QFs of small size (under 50 MW) are far less able to compete in RPS solicitations than are large projects. Many, if not most, small QFs simply cannot comply with some of the terms and conditions in the utility solicitations without putting their companies and their projects at high risk, and therefore cannot participate in RPS solicitations. For example, the substantial credit guarantees combined with the performance requirements can produce an unacceptable risk. In addition, the transaction costs of participating in an RPS solicitation, including months of negotiation, are too high for some companies to bear. These projects need a place in the market, as PURPA requires, and they are needed to meet the state's ambitious RPS goals.

Fourth, it is widely recognized that certain renewable technologies are not currently as cost-effective as other renewable technologies. It can be expected, for example, that

⁵ MPRs are supposed to be published only after an IOU develops its short list of potentially winning bidders. This does not, however, diminish the effect discussed above, as a short-listed existing project bidder with a bid in excess of the MPR is likely not to obtain a contract, while a similar bidder with a new project may obtain one with SEPs.

existing biomass facilities will be unable to compete with state-of-the-art wind or geothermal resources. This is especially true as federal tax incentives favor new wind and geothermal technologies over existing biomass facilities.⁶ The RPS Program is simply not likely to be a viable option for the relatively more costly resources. Yet, through a combination of avoided cost payments and the California Energy Commission's Existing Renewables Program Tier I PGC payments (for which existing biomass and solar-thermal projects are eligible), these resources can continue to provide needed renewable energy supplies to California, support the local tax base, employ hundreds of workers throughout the state, and improve air quality by reducing the open-air burning and decomposition of biomass wastes.

Finally, it is worth highlighting three features of the PURPA QF program that bear on this point. One, by express provision of California law, the Commission's implementation of the RPS Program does not constitute implementation of PURPA.⁷ Two, the Federal Energy Regulatory Commission (the federal agency charged with implementing PURPA) has found that the opportunity for QFs to participate in utilities' competitive solicitations does not satisfy PURPA's must-purchase obligation.⁸ As such, mere reliance on the RPS Program for renewable QF procurement is not legally sufficient. Three, if the avoided cost prices are set correctly by the Commission, then ratepayers should be indifferent to the method of procurement of the renewable power, whether it be RPS derived or pursuant to a QF contract.

C. The Proposed Firm and As-Available QF Contracts will not Undermine the RPS Program.

The CCC, in its comments, remarks that the IOUs have expressed a concern that offering a QF contract option to renewables will undermine the RPS Program. This concern is unfounded. The RPS Program offers bidders a chance for a long-term fixed price contract, with SEPs for new projects to supplement IOU payments capped at the MPR. This is a potentially far

⁶ Existing biomass facilities recently received a federal production tax credit through the end of 2005, although at half the level for new wind and geothermal resources.

⁷ Public Utilities Code Section 399.15(d).

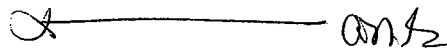
⁸ See *Cogen Lyondell, Inc. et al.*, 95 F.E.R.C. ¶ 61,243 (2001).

more attractive option than is currently envisioned in this proceeding.⁹ As explained by the CCC, the firm contract option is likely to be unattractive to certain renewable technologies (e.g., intermittent technologies) as it involves firm capacity obligations and is expected to base prices upon changing gas costs. The as-available option bases prices upon short run avoided costs, which is significantly more volatile than what can be expected from the RPS Program.

The Renewables Coalition urges the Commission to view the QF contract options endorsed herein as a back-stop mechanism designed to ensure that the many benefits of existing renewables are not lost and to ensure that Commission continues to satisfy its PURPA obligations to implement the must-purchase requirement.

Dated: November 10, 2004

Respectfully submitted,



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Association

⁹ While there is not yet any formal link between the MPR and the avoided cost prices to be paid under the new long-term contracts, it is not unreasonable to expect that there will be some convergence of these mechanisms.

¹⁰ Counsel for the California Wind Energy Association has been authorized to sign this document on behalf of the Renewables Coalition.

Certificate of Service

I hereby certify that I have this day served a copy of the

***Proposal of the California Biomass Energy Alliance, LLC,
the California Wind Energy Association, the California Landfill Gas Coalition, and the Solar
Thermal Electric Alliance for a Long-Term Qualifying Facility Policy.***

on all known parties to R.04-04-003 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on November 10, 2004, at San Francisco, California.


Parashita Marschall