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June 13, 2011

Mr. Honesto Gatchalian and Ms. Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
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Re: Comments of the Large-scale Solar Association on Draft Resolution Number E-4405

Dear Mr. Gatchalian and Ms. Salinas:

I. Introduction

The Large-scale Solar Association (“LSA”) provides the following comments on draft Resolution Number E-4405 (“Draft Resolution”), issued in response to Pacific Gas and Electric Company (“PG&E”) Advice Letter No. 3759-E (“AL 3759-E”). The Draft Resolution would reject PG&E’s request for California Public Utilities Commission (“Commission”) approval of the executed power purchase agreement (“PPA”) between PG&E and North Star Solar, LLC (“North Star”) on the grounds that the proposed contract price is high compared to prices recently offered to PG&E by other projects eligible under California’s Renewables Portfolio Standard (“RPS”). Through these comments, LSA expresses no opinion as to whether the particular North Star PPA under review should be approved or rejected. Rather, LSA seeks to bring to the Commission’s attention certain programmatic concerns made apparent by the Draft Resolution and requests that these concerns be expeditiously addressed.

LSA understands the Commission’s desire to include prevailing market conditions in its consideration of RPS PPAs. The process should balance indications of prevailing market trends with established prices of delivered contracts, to promote benefits to consumers that can only result from both cost containment and real, “steel in the ground” renewable projects. The problem however, is that because the RPS negotiation and approval processes are lengthy and unwieldy, it is difficult for pricing of contracts at the time they reach execution to be in line with the most recent indications of market conditions, particularly when technologies are becoming more mature and rapidly descending the price curve. Fundamentally, it is challenging for both buyers and sellers to “time the market” if there are substantial delays between bid offers and final approval. The Commission should both focus on streamlining the process and clearly articulating the evaluation metrics that will be used for each vintage of contracts moving

forward. Because the Draft Resolution does not address how the Commission weighed contract price and prevailing market conditions against the Commission's other least-cost, best-fit ("LCBF") criteria, the Draft Resolution and the contract evaluation process lack the transparency necessary for developers to understand how their projects will be evaluated by the Commission. LSA emphasizes that the PPA approval process must be fully transparent to ensure efficient RPS-eligible project development.

In addition, the Draft Resolution illustrates the problems for developers that arise because of the lengthy delays between the times that a developer's offer is accepted by a utility and that the related PPA is executed and then reviewed by the Commission. As such, LSA respectfully suggests that the Commission promote expeditious execution and approval of RPS PPAs. Finally, while LSA recognizes that the Commission considers price reasonableness when reviewing every RPS contract, the Draft Resolution raises cost containment policy issues that should be addressed in the RPS proceeding, rather than through the Commission's resolution of an advice letter.

II. Discussion

A. The Draft Resolution Injects Significant Uncertainty into the Renewable Energy Development Sector

If developers are to identify viable projects, they need to understand the criteria that the Commission will employ in reviewing RPS PPAs. Through its adoption of the LCBF in Decision 04-07-029, the Commission directed utilities to consider not only the market value of a bid, but many other factors including transmission congestion and transmission network upgrades, the fit of a particular resource with the utility's generation portfolio, and numerous other qualitative factors including benefits to low-income or minority communities, environmental stewardship, local reliability and resource diversity benefits.¹ The Draft Resolution focuses only on contract price and its relationship to prevailing market conditions, with no explanation as to how or whether Staff weighed that contract price against the other LCBF factors when arriving at its recommendation that the Commission reject the PPA. As such, developers are left to guess whether and how the LCBF may have been reformulated. The result of this lack of transparency is that developers will be unable to ascertain how the Commission will review projects in the future. Absent this understanding, developers are severely hindered from developing projects that will obtain Commission approval. Expending resources developing projects that never come to fruition, and negotiating with the utilities PPAs that are ultimately rejected, increases ratepayer costs. Thus, it is imperative that there be complete transparency in the Commission's PPA approval process.

LSA emphasizes that Developers commit significant resources to a project in advance of Commission review of a PPA. Indeed, it is not uncommon for a developer to have spent millions of dollars by the time Staff issues a resolution recommending approval or rejection of the developer's PPA, vast sums that in many cases are irrecoverable if the PPA is ultimately rejected. In fact, advanced investment in a project allows the developer to submit a more mature

¹ See, generally, Decision 04-07-029.

project to the utility, which should reflect a more accurate price and timeline. Approval of higher viability, mature projects with access to the capital necessary to bring such projects to fruition should be the Commission's objective. While developers understand that project development bears a certain amount of risk, the process by which the Commission approves RPS-eligible projects must be transparent and the Commission must clearly articulate the criteria by which contracts are evaluated.

In light of the current delays for execution and approval of PPAs, discussed more specifically below, the Commission must clarify how it will evaluate the reasonableness of contracts in a renewable market that has, over the past two years, become very dynamic. The Commission must provide increased insight into how it will evaluate the reasonableness of contracts in the future relative to prevailing market conditions, and must articulate how it is taking into account the manner in which technology is evolving. By sustaining certainty among developers of RPS-eligible projects, the Commission will foster the efficient growth of renewable energy resources and encourage investment.

B. The Commission Should Encourage Expeditious Execution of PPAs and Should Timely Review PPAs

The Draft Resolution reveals the significant quandary that arises for developers as a result of the current delays between the times that a developer's offer is accepted in a utility's solicitation, that the associated PPA is executed, and that the Commission ultimately reviews that executed PPA. Prices fluctuate over time—sometimes increasing as a result of such things as scarcities in labor and materials or a higher cost of capital and sometimes decreasing due to such things as the evolution of technology. Timing the market is a challenge to both buyers and sellers and by extension, the regulators that establish policy. The longer the process, the higher the likelihood that bids misalign with market conditions such that otherwise viable projects may be jeopardized and less clean, renewable energy may ultimately be delivered to the public.

LSA understands that the Commission has limited resources and is not asking for a cursory review of these important RPS contracts. Commission participation in the RPS-eligible project selection process through the Procurement Review Group, and the use of the advice letter process to seek approval of PPAs, were employed to facilitate expeditious PPA review. However, as evidenced by the Draft Resolution, delays remain a significant problem, often because of protracted negotiations with the utilities. Were the Commission to encourage utilities to execute more expeditiously PPAs that result from RPS solicitations, it would diminish the likelihood that a developer would have expended tremendous resources planning a project, preparing a solicitation offer, continuing to develop its project, and negotiating a PPA with a utility, only to find that its bid no longer corresponds to apparent market prices pertaining at the time of contract review. Further, expediting the process of PPA execution and approval would lower the cost of RPS-eligible project development by decreasing legal fees and project-carrying costs and would thus ultimately lower prices for ratepayers. Perhaps more importantly, it should bring RPS-eligible projects on line sooner and thereby help to advance the ambitious RPS goal

adopted through the enactment of SBX1 2.² By making market risk more manageable, a more timely process would thus benefit buyers, sellers and consumers.

C. Cost Containment Policies Should be Addressed in the RPS Proceeding Rather than through the Advice Letter Process

While the Commission has always considered price reasonableness of every commercial transaction before it, LSA highlights that cost containment is the subject in the Order Instituting Rulemaking, R.11-05-005. Pursuant to SBX1 2, there are new cost containment policies to be developed through the RPS proceeding, and it is imperative that they be developed as quickly as possible. However, those policies have yet to be developed. To the extent the Commission is evaluating renewable project reasonableness in new ways, it should do so transparently and through the process that is soon to be underway in R.11-05-005. The Commission's resolution of an advice letter is not an appropriate forum for such policy making.³

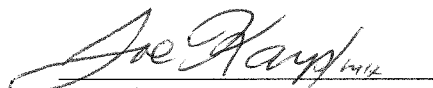
² See California Senate Bill X1 2, creating an RPS goal of thirty-three percent by 2020, signed into law on April 12, 2011.

³ See General Order 96-B at § 5.1 (explaining that “the advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions”) (emphasis added).

III. Conclusion

LSA respectfully asks the Commission to review the Draft Resolution in light of these comments, with careful consideration as to the impact that its adoption may have on the efficient development of renewable energy projects in California and the State's ambitious RPS goals. To ensure efficient renewable development, the PPA approval process must be transparent, and the Commission must clearly articulate the criteria that will be used to evaluate projects moving forward. LSA further requests that the Commission promote policies and practices that will expedite the execution and approval of RPS PPAs.

Respectfully submitted,



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*Attorneys for the Large-Scale Solar
Association*

Certificate of Service

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

**COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON
DRAFT RESOLUTION NUMBER E-4405**

on all known parties to R.11-05-005, along with additional parties pursuant to instructions on cover letter to Draft Resolution E-4405, 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 June 13, 2011, at San Francisco, California.



Marcus Hidalgo