INDEPENDENT
ENERGY
PRODUCERS

June 13, 2011

Honesto Gatchalian and Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
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RE: COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON DRAFT RESOLUTION E-4405

Dear Mr. Gatchalian/Ms. Salinas:

The Independent Energy Producers Association ("IEP") is a trade association representing the interests of developers and operators of electric generation facilities. We have been active in Commission-related contract issues for 30 years and most recently in the development and implementation of the California Renewables Portfolio Standard ("RPS") statute. We appreciate the opportunity to comment on Draft Resolution E-4405 related to a project proposal that has undergone the time-consuming rigors of a Commission-approved and utility-implemented competitive solicitation process.

Pacific Gas and Electric Company ("PG&E") seeks Commission approval of a 20-year Power Purchase Agreement (PPA) with North Star Solar, LLC (North Star Solar). The North Star Solar facility is a proposed 60 megawatt (MW) photovoltaic (PV) facility in the Westlands Water District, a known solar resource area near Mendota, California. Interconnected directly to the high-voltage transmission system, the facility is projected to generate 119 gigawatt-hours per year of renewable energy. The project is expected to become operational beginning June 30, 2013. Draft Resolution E-4405 rejects the PPA on the ground that the price of energy under the PPA is too high in relation to recent bids.

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IEP is concerned that Draft Resolution E-4405 contains a fundamental flaw, creating an "apple to oranges" comparison of a fully executed PPAs with bids in a totally different solicitation for different renewable products. The Draft Resolution sets a dangerous precedent for future PPAs submitted for approval that have been delayed as they work their way through the existing procurement process. The Draft Resolution may create the conditions for delayed decision-making and inaction. Legitimate bidders in competitive RPS Request for Offers ("RFO") solicitations need assurance that when they participate and compete fairly in a Commission-approved procurement mechanism, their projects will be reviewed in light of the product sought and the context of the solicitation in which they participated. The draft Resolution sets this expectation on its head.

The North Star Solar project is the result of PG&E's 2009 RPS solicitation, and PG&E states that the contract price exceeds the applicable 2009 market price referent (MPR). The project was proposed, evaluated, and finally negotiated consistent with the Commission's RPS program, including review by an Independent Evaluator. The project is coming to the Commission for approval nearly two years after it was bid in PG&E's 2009 RPS RFO, which is a fairly normal lag-time for projects submitted into a utility's RPS RFO. There is no suggestion that the bid evaluation and review process was abused or resulted in the selection of projects inconsistent with Commission's goals.

The Draft Resolution rejects the PPA and concludes that the North Star Solar PPA's price is not competitive with bids submitted in PG&E's February 2011 solicitation to acquire 50 MWs of solar PV.

The fundamental flaw of Draft Resolution E-4405 is that it sets up an "apples and oranges" comparison that is a recipe for inaction. The Draft Resolution compares two different renewable products subject to two separate procurement mechanisms (*e.g.,* RPS (eligible at any size) vs. Solar PV (less than 20 MWs)) occurring over different time frames. Moreover, the Draft Resolution compares the price of a fully negotiated PPA, which has gone through the rigorous and time-consuming

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Commission-approved review process, with bids for projects that have not yet been completely vetted by PG&E or the Commission.

The Draft Resolution raises several concerns that will have long-term ramifications on the successful implementation of the RPS. First, bids in a competitive procurement may not end up as the final price of the negotiated agreement submitted to the Commission for approval. Thus, a comparison of the price term of an executed agreement with a future bid is skewed, in most cases to the disadvantage of the executed PPA. The Commission must avoid creating a "grass is always greener" precedent of comparing fully executed PPAs with initial bids or proposals. Competitive solicitations may include speculative projects, bids submitted as "loss leaders," and bids for which the underlying emerging technology is promoted with untested claims of rapidly declining costs.

Second, for the Commission's RPS RFO process to have any integrity, projects submitted by the utilities for Commission approval should be recognized as having undergone a rigorous bid evaluation among many competitors, lengthy negotiation with the utility to finalize the PPA, and an independent review process. This process is focused on a particular RPS product specified in a particular RFO. Comparisons of executed PPAs with alternative products, or similar products sought through different procurement mechanisms in different time periods, undermines the integrity of the RPS RFO process.

The Commission should not fall into the trap of rejecting a fully negotiated contract today based on the expectation that costs for future, speculative projects will be lower. In the context of the 2009 RFO, the standard for review was fairly established for projects submitted at that time. That was the market reality that this PPA and its competitors responded to in submitting their bids. The Draft Resolution does not suggest that this PPA was "out of the money" with the other competitive bids, for this renewable product, submitted at the time. Rather it is seduced by the expectation of future prices at a lower cost.

However, using this same logic, it is reasonable to expect that the bids submitted in 2011, after being fully negotiated and processed through the

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Commission, will be at higher prices than bids that will be seen in the future. Trying to "time the market" in this way will lead to inaction and ultimately a failure to meet the RPS goals.

The point of competitive markets is to drive prices downward and to foster innovation. It is logical to assume that a healthy RPS market creating demand will result in new technologies and lower prices in the future. However, there is a temporal aspect to markets, with prices reflecting moments in time. A procurement process that requires two years to get to ultimate Commission approval will have a very difficult time ever getting to "the right price."

The Commission has the authority and responsibility to reject projects that are not just and reasonable in the context of the specific products being sought through a specific procurement mechanism. These responsibilities, however, should be exercised in light of the requirements and protocols applied by the Commission at the time the utilities' procurements were initiated. To do otherwise risks undermining the regulatory certainty necessary to make the competitive procurement process an efficient and effective means to develop new generation in a timely manner.

The Draft Resolution rejects this PPA predicated on what it sees as lower prices in the current market. IEP hopes that this is in fact the case, although it remains to be seen. If it is the case, it is the result of a competitive market, building off of a stability established in past solicitations. As the market moves forward, we should expect further technological advances and cost reductions. However, this success will be chilled if the Commission sets a precedent that price and terms bid today will be judged on the basis of market conditions at some uncertain point in the future.

It is clear that the Commission is legitimately concerned about price. While the promise of a lower price is inviting, the Commission should be careful not to undermine the integrity of its overall process. The Commission should evaluate this PPA and approve or reject it on the basis of the type of product and price that the Commission authorized in the 2009 RPS RFO conducted by PG&E.

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In addition, the Commission should seek ways to truncate the overly time-consuming negotiation and approval process in the current market structure. Two years is way too long to maintain a bid while awaiting the Commission's approval. The Commission should strive for a 60-day process. A market with bids, contracts and approvals closer in time will better reflect current prices and better serve all parties.

Thank you for considering our concerns.

Respectfully submitted,

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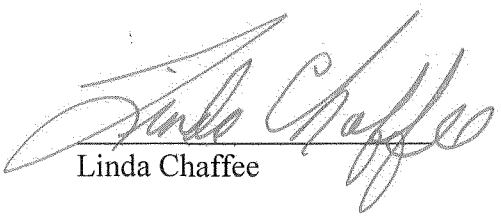
CERTIFICATE OF SERVICE

I, Linda Chaffee, certify that I have on this 13th day of June 2011 caused a copy of the foregoing

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON DRAFT RESOLUTION E-4405

to be served on all known parties to R.11-05-005 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of June 2011 at San Francisco, California.



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2970/010/X129458.v1

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Updated June 13, 2011

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