JOHN NIMMONS & ASSOCIATES, INC.
SUSTAINABLE ENERGY STRATEGIES

August 2, 2011

Honesto Gatchalian and Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: RECURRENT ENERGY COMMENTS ON DRAFT RESOLUTION E-4414, IMPLEMENTING THE RENEWABLE AUCTION MECHANISM

Dear Mr. Gatchalian and Ms. Salinas:

Recurrent Energy develops, owns, and operates distributed solar projects ranging from less than 1 MW to over 20 MW in the U.S., Canada, France, Germany, Spain and Israel. Starting with about a dozen people in 2007 and having grown to over 100 people today, Recurrent Energy now has nearly 500 MW of solar projects operating, in construction, or under contract, and some 2.5 GW overall in our development pipeline (mostly ground-mounted systems from 2–20 MW).

For over two years now, Recurrent Energy has been an active and committed participant in the Renewable Auction Mechanism (RAM) proceeding in R. 08-08-009. We have been strong supporters of the RAM concept, and we believe that the Commission's December 2010 Decision (D.10-12-048) thoroughly addressed and thoughtfully resolved the many novel and difficult issues framed by the Energy Division and briefed by the parties. We believe that RAM has great potential to quickly deliver grid-side distributed generation to help meet California's new 33% RPS requirement and, although initially implemented as a one-gigawatt program, we are confident that RAM can easily be expanded to cost-effectively meet much of Governor Brown's 12-gigawatt goal for Local Energy Resources.

Recurrent Energy strongly supports most of the Draft Resolution's recommendations. We will not burden the Commission by commenting specifically on each of those, but will focus on what we believe to be factual, legal or technical errors in two of the recommendations, and will request clarification on two others. We will first address those which we think rest on actionable errors, including recommendations to:

A. impose a seller concentration limit of 20 MW of total capacity per seller per auction, and

B. allow existing projects to participate in RAM.[1]

We will then explain why we think it is necessary to clarify recommendations to:

C. remove the requirement that a seller achieve full deliverability status from bidding protocols and standard RAM contracts, and specifically address this issue in discussions among CPUC Staff, CAISO and the IOUs, and

D. require the IOUs to add the actual estimated network upgrade costs to the seller's price when ranking bids. [2]

Finally, in Appendix A Recurrent Energy will separately list its recommended changes to the Draft Resolution's proposed Findings, Conclusions and Ordering Paragraphs that address the topics listed above.

[1] Draft Resolution, pp. 22-23 and pp. 6-7.
[2] Draft Resolution, pp. 17 and 19.

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A. D. 10-12-048 Does Not Authorize Imposing Uniform, Capacity-Based Seller Concentration Limits, Which Would Yield Capricious Results and Conflict With Price-Only Bid Selection.

1. The Decision did not adopt seller concentration limits, for compelling reasons.

During the proceeding, the Energy Division recommended that no single seller be permitted to contract for more than 50% of the capacity solicited in each auction. A few parties recommended other forms of seller concentration limits based on the number of bidders, or on MW caps like the one recommended in the Draft Resolution, arguing that such limits would foster competition and result in lower-cost power for utility customers.[3]

In his August 2010 Proposed Decision, ALJ Mattson rejected those recommendations. The Commission likewise declined to adopt seller concentration limits in its December 16 Decision. The reasoning that Judge Mattson presented to the Commission was as follows:

> *A specific concentration ratio does not guarantee that IOUs will secure low cost power.* It would require rejection of all bids when only a few bidders participate (e.g., two bidders with a 50% ratio; five bidders with a 20% ratio). This *rejection would be required even when all prices are below a reasonable benchmark (e.g., MPR) and it would otherwise be reasonable to select those projects.*
>
> *A seller concentration test adds complexity that is unlikely to provide reasonable offsetting protection*. For example, entities may hide behind corporate structures that make determination of concentration ratios both difficult and meaningless. Measurement of concentration is not straightforward. It may include not only bidders but also manufacturers. According to some, it requires adjustment for the number of unaffiliated participants by technology group in a prior auction round. The measurement requires definitions (e.g., bidders, manufacturers, affiliates, technology groups), data collection, and a number of calculations. This introduces the potential for errors and disputes. It substantially increases program complexity.
>
> *We are not convinced that the possible benefits of a specific seller concentration test outweigh potential costs, complexities and disputes.*[4]

2. The Decision provided each IOU the flexibility to adopt concentration limits or not: it did not require them to do so, much less authorize a uniform limit binding all IOUs.

Judge Mattson was not alone in his views. Arguments for imposing seller concentration limits apparently did not convince the Commission, either. Instead, its Decision explicitly left it up to each utility whether to propose such limits, concluding that

> [i]f an IOU would like to include other bid evaluation metrics, such as seller concentration, in a RAM auction, it should propose the criteria in its implementation advice letter for Commission review; an IOU's proposal should not conflict with a price-only bid selection methodology.[5]

The Draft Resolution would effectively annul this conclusion by imposing a seller concentration limit of 20 MW per seller, per auction.[6] It errs not only by imposing a mandate where the Decision expressly provided for flexibility, but by applying this mandate uniformly to all three IOUs including those which

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[3] See ALJ Mattson's August 24, 2010 *Draft Decision Adopting the Renewable Auction Mechanism*, 9.3.1, pp. 94-95.

[4] Id., pp. 95-96; emphasis added.

[5] *Decision Adopting the Renewable Auction Mechanism* ("Decision" or "D.10-12-048"), December 16, 2010; COL 41, at p. 91.

[6] Draft Resolution E-4414, issued July 13, 2011, p.23.

propose different risk management strategies and evaluation metrics, and further constraining their judgment in selecting the lowest-price projects that meet their portfolio needs.[7]

3. Any uniform limit based on project capacity would be capricious: it would be only tenuously related to seller concentration, and would yield very different concentration ratios for each IOU.

Even if the proposed requirement for a capacity limit of 20 MW per seller, per auction did not contradict the Decision, imposing it uniformly in all IOU auctions would yield arbitrary results. This is because such a limit would actually result in widely varying seller concentrations among different utility auctions. The following table illustrates this, using the capacity allocations established in D.10-12-048.[8]

Table 1. Impact of Recommended 20 MW Seller Concentration Limit

UTILITY	TOTAL RAM ALLOCATION	ALLOCATION FOR EACH RAM AUCTION	SELLER CONCENTRATION (20 MW / each auction allocation)
SCE	498.4	124.6	**16%**
PG&E	420.9	105.2	**19%**
SDG&E	80.7	20.2	**99%**
Totals:	1,000.0	250.0	

In other words, enforcing a 20 MW per seller, per auction limit would result in 99% concentration in SDG&E's auction, but only 16% and 19%, respectively, in SCE's and PG&E's auctions. Recalling that the Energy Division originally proposed that no single seller be permitted to contract for more than 50% of the capacity solicited in each auction, these results would either be far below that threshold – or far above it. Either way, the 20 MW limitation would bear no sensible relation to any actual seller concentration percentage, let alone to any particular risk level associated with that.

Given the tenuous relationship between a per-seller capacity limit and any identifiable risk to utilities or their ratepayers, the Commission wisely decided to forego a rigid seller concentration rule. Instead, as PG&E had recommended, it allowed the utilities "to rely on their individual credit policies … designed to address counterparty concentration risk."[9]

4. Imposing pre-defined, capacity-based seller concentration limits negates RAM's competitive rationale and conflicts with a price-only bid selection methodology: it will likely result in higher PPA prices, lower project viability, and a much less effective RAM program.

The Commission's RAM Decision included the following Findings of Fact and Conclusions of Law:

Findings of Fact

"5. The RPS statute and program is premised upon employing competition to reach optimal outcomes.

"22. Project selection limited to the price variable is consistent with the RAM being relatively simple and transparent."

[7] The Draft Resolution states that this issue has already been litigated for PG&E in Resolution E-4368. However, that resolution was not issued in the RAM context, but in relation to PG&E's PV Program, which did not involve price-only bid selection. Moreover, we are aware of no factual evidence introduced there to justify 20 MW or any other seller concentration limit.

[8] D.10-12-048; allocations from Table 2 on p. 31.

[9] *Comments of Pacific Gas and Electric Company (U 39 E) on Administrative Law Judge's Ruling Regarding Pricing Approaches and Structures for a Feed-In Tariff*, filed October 19, 2009 in R.08-08-009, at p. 11.

Conclusions of Law

18. RAM project selection should be by price with least expensive selected first.

23. An IOU should be able to reject bids if it determines that one or more bids are not cost competitive or if there is evidence of market manipulation.[10]

Consistent with Judge Mattson's observation quoted earlier, the Draft Resolution's capacity-based concentration limit will not guarantee that IOUs secure the least expensive power – but it will require rejection of bids – *even when all prices are below a reasonable benchmark (e.g., MPR) and it would otherwise be reasonable to select those projects.*[11]

The Draft's pre-set, MW-based concentration limit virtually guarantees this outcome. Almost by definition, the only sellers affected by a 20 MW limitation will be those whose bids are the *most competitive* – i.e., sellers whose prices are low enough and whose viability is high enough to merit awards totaling at least 20 MW in a single auction. To mechanically cap their participation at 20 MW even though they have shown they can deliver the greatest value to utilities and ratepayers – and to substitute lower-ranked bidders who would not otherwise receive PPAs – would not only undermine the market-based premise of RAM: it would almost certainly increase ratepayer costs. And this perverse outcome would occur *without any evidence in the record of this proceeding* that 20 MW per seller – or any other predefined limit – threatens healthy competition, or outweighs the costs, complexity or potential for disputes that such a limit entails.

5. Seller concentration data can help the Commission monitor market competition as RAM proceeds, but should not determine acceptance or rejection of individual bids in IOU auctions.

As Judge Mattson emphasized, this "is not to say that competition is not important. It is. In fact, it is a fundamental and vital premise that underlies the entire RPS structure, not limited to but including RAM."[12] However, he also noted the importance of distinguishing between measuring and enforcing competition in the context of the overall RAM program, and selecting individual winners in a particular IOU auction:

> "We suggest the use of seller concentration as one of several potential measures of market competition in our [later] discussion – of the data necessary to measure competition. It is identified there as one potential measure, not as a direct factor in acceptance or rejection of bids."[13]

D.10-12-048 does in fact require each utility annually to report data, information, and evaluation on competition and competitiveness in RAM auctions. As data becomes available, these IOU reports must also contain information on measures of market power and seller concentration, among other information needed for conscientious program evaluation.

These program evaluation requirements are important, but they are very different from the Draft Resolution's proposal to disallow bids beyond 20 MW per seller in individual IOU auctions. This difference is entirely appropriate, because the immediate need that RAM addresses is to enlist competition in reducing power costs from mid-size renewable plants, not to ward off market concentration that may never materialize. If and when that problem actually surfaces, the information the Commission has required the utilities to furnish will provide a much firmer foundation from which to address it wisely.

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[10] D.10-12-048, pp. 81, 88-89. See also Ordering Paragraph 1.c., p. 94.

[11] Note 2, above.

[12] Note 1, at p. 96.

[13] Id., p. 96 at note 157.

B. Whether existing projects could participate in RAM was not presented to or briefed by the parties, and allowing such participation now would undermine RAM's purpose and discount important elements of D.10-12-048.

Although the December 16 Decision did not address, and the parties did not brief, the question whether RAM auctions should be open to both new and existing projects or only to new ones, the Draft Resolution would require the IOUs to amend their bidding protocols to allow existing projects to participate.[14]

The only support the Draft cites for this recommendation is Fortistar Methane's March 17, 2011 protest to PG&E's RAM implementation Advice Letter 3809-E, to which non-utility parties have had no opportunity to reply.[15] The sum total of Fortistar's argument there, unsupported by data or evidence, was that

> "[t]here is no reason that small existing RPS-eligible projects should be excluded from the RAM. Existing projects should be able to compete to provide RPS-eligible energy at a lower cost to ratepayers."[16]

PG&E's reply to Fortistar's argument was more illuminating:

> "Fortistar argues that "[t]here is no reason that small existing RPS-eligible projects should be excluded from the RAM." In fact, as described more fully in the Advice Letter, PG&E proposes to limit eligibility to new facilities for three reasons: (1) the RAM Decision's focus on project viability and online dates imply this restriction; (2) a focus on new resources will expand the pool of new RPS-eligible facilities in California, consistent with State policy goals; and (3) allowing existing facilities that have potentially paid down capital costs to compete against new projects that need to recover initial capital investments could squeeze new projects out of the auctions in a price-only comparison. The Commission should expressly limit the RAM to new facilities rather than merely imply that limitation in the structure of the program."[17]

Recurrent Energy agrees with PG&E. We urge the Commission not to adopt the Draft Resolution's recommendation to allow existing projects to bid in RAM auctions, but instead to expressly limit RAM auctions to new projects. If there are better reasons or more factual support for including existing projects than have been presented so far, this can be the subject of a RAM Program Forum where all parties will have an opportunity to be heard.

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[14] Draft Resolution, p. 6-7, proposed Finding and Conclusion 8 at p.38, and Ordering paragraph 5 at p. 42.

[15] General Order 96-B, Rule 7.4.3 governs replies to utility advice letters, and does not authorize replies by parties other than the utility which filed the advice letter.

[16] *Protest of Fortistar Methane Group of Pacific Gas and Electric Company's Advice 3809-E and San Diego Gas & Electric Company's Advice Letter 2232-E*, dated March 17, 2011, p. 4.

[17] PG&E *Reply to Protests of Advice Letter 3809-E, PG&E's Request for Approval of Implementation and Administration Details for PG&E's Renewable Auction Mechanism Program*, dated March 30, 2011, p. 8. In its Advice Letter, PG&E had observed that the limitation to new projects "is implied by the structure of the Decision, since certain program features (e.g., 18-month online deadline and project viability requirements) would not be applicable to existing projects." PG&E had also noted that the Commission's treatment of QF projects further supported excluding existing projects from RAM, since many existing RPS-eligible projects that would otherwise qualify for RAM are QFs; the Decision explicitly did not alter decisions or obligations related to purchases from QFs; and numerous Commission decisions approving bilateral QF contracts indicated these existing projects were not to be procured exclusively through RAM. See PG&E RAM Advice Letter 3809-E, dated February 25, 2011, pp. 18-19.

C. Clarifying the process and timing for resolving deliverability and resource adequacy requirements before the first RAM auction will benefit all market participants.

Recurrent Energy supports the Staff's recommendations to reject for now the IOUs proposal to require a seller to achieve full deliverability status, and to specifically address this issue in discussions among CPUC Staff, CAISO and the IOUs.[18] Here, we request clarification about the timing of that effort relative to the first RAM auction, and we suggest why it is important to resolve the issue quickly.

The question of sellers obtaining full capacity deliverability for projects bid into RAM auctions links this proceeding with complicated transmission planning issues under consideration in CAISO's proceedings on Generator Interconnection Process (GIP) reform and Transmission Planning Process (TPP), in which Recurrent Energy is an active participant. The issue is not as simple as price- versus value-based bid selection. It has ramifications for transmission costs and resource adequacy requirements and, as the Staff recognizes, it requires careful and focused consideration. Until that has occurred, it is important to clearly articulate and confirm that price remains the primary determinant for bid selection, and that deliverability status is the seller's choice.

Recurrent Energy anticipates that the IOUs may act on the proposal to reconsider this topic made both explicitly, and implicitly in the Draft Resolution's rejection of the IOUs' proposal at this point in time.[19] In any case, the Draft Resolution's Ordering Paragraphs should clarify the process for joint agency collaboration and consideration of further evidence on this topic in a way that will settle the matter before the first RAM auction. Accordingly, we request the following modifications to Ordering Paragraph 12:

> 12. The investor-owned utilities shall not require sellers to achieve full deliverability status at this time. The investor-owned utilities will convene staff from the CAISO and the Energy Division 15 days after adoption of this Resolution in an effort to determine the appropriate level of deliverability sellers shall have. Within 15 days following that collaborative meeting the investor-owned utilities will submit via advice letter a proposal to resolve the deliverability issue. Energy Division shall act on the Advice Letter at least 30 days before the first auction is scheduled to be held. ~~The investor-owned utilities shall require the seller to apply for a deliverability study in order to count generation for resource adequacy in the instance where no deliverability upgrades are needed to deliver the energy and count it towards resource adequacy.~~

As a starting point for that effort, we note that neither SCE's 2010 Renewable Standard Contract form PPA, nor PG&E's 2011 PV Program PPA, require full deliverability as a condition to commercial operation. Moreover, following GIP reform, all projects 20 MW or less are analyzed for full capacity deliverability in study clusters that include larger projects with longer development timeframes, and that require multi-year build-outs of network upgrades to become deliverable. When the full capacity deliverability status of a 20 MW project depends on the upgrade construction schedules of multiple larger projects in the cluster, the 20 MW project loses all control over the schedule on which it will become deliverable, and the RAM's 18-month COD deadline can easily become unachievable. That concern, together with the fact that the RAM PPA cannot be renegotiated, precludes the flexibility needed to ensure full deliverability by the commercial operation date.

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[18] Draft Resolution, p. 17.
[19] Id.

D. Clarifying that estimated network upgrade costs should be included in the seller's bid rather than added by the IOUs for ranking purposes, will accurately reflect industry practice and simplify RAM administration.

Recurrent Energy protested the need for a cost cap on network upgrades, on the ground that such costs should be included in the seller's bid price and evaluated as part of that price. Here we request clarification of the Draft Resolution's language addressing this subject.

In the paragraph that begins on page 18 and continues on page 19, the Draft contains statements that could be construed to contradict each other. First it states that "Network upgrade costs are direct costs that ratepayers incur and should be taken into account since the bid price does not reflect this cost." We believe this statement is in error, as any bidder would expect to provide an all-in auction price, rather than a disaggregated set of component prices. In the next sentence, the Draft observes correctly that "[b]ecause staff recommends adopting SCE's proposal to require projects to have completed a System Impact Study, a Phase I interconnection study, or have passed the Fast Track screens in order to participate in each auction, sellers should have this information when they submit their bids."

The recommendation that follows on page 19 of the Draft appears to reflect what we think is an erroneous assumption that bid prices will not include network upgrade costs, so IOUs will need to add those costs to the seller's price. To avoid confusion, we propose that that recommendation and the Draft's Ordering Paragraph 11 be amended to read as follows:

> 11. The investor-owned utilities shall not use transmission network upgrade cost caps; shall remove any such cost caps from their bidding protocols and contract; and shall require the seller to include the actual ~~. The investor-owned utilities shall add the~~ estimated costs of reliability network upgrades, as documented by the CAISO or IOU study process in ~~to~~ bid prices for ranking purposes.

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With the changes and clarifications discussed above, Recurrent Energy looks forward to a final resolution adopting the Energy Division's recommendations in its Draft Resolution.

Respectfully submitted,

/s/ *John Nimmons*
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Director Julie Fitch, Energy Division
Chief Administrative Law Judge Karen Clopton
General Counsel Frank Lindh

APPENDIX A

RECOMMENDED CHANGES TO PROPOSED FINDINGS, CONCLUSIONS, AND ORDERING PARAGRAPHS

FINDINGS AND CONCLUSIONS

8. Participation in RAM auctions is limited to new generation facilities. ~~It is reasonable to allow existing generators to participate in the renewable auction ,mechanism.~~

~~21. It is reasonable to limit seller concentration in each auction to 20 megawatts per seller. The IOUs may execute multiple contracts per seller, as long as the total capacity under contract per seller resulting from each auction does not exceed 20 megawatts.~~

ORDERING PARAGRAPHS

5. The investor-owned utilities shall allow only ~~existing and~~ new projects to participate in each auction.

11. The investor-owned utilities shall not use transmission network upgrade cost caps; shall remove any such cost caps from their bidding protocols and contract; and shall require the seller to include the actual ~~. The investor-owned utilities shall add the~~ estimated costs of reliability network upgrades, as documented by the CAISO or IOU study process in ~~to~~ bid prices for ranking purposes.

12. The investor-owned utilities shall not require sellers to achieve full deliverability status at this time. The investor-owned utilities will convene staff from the CAISO and the Energy Division 15 days after adoption of this Resolution in an effort to determine the appropriate level of deliverability sellers shall have. Within 15 days following that collaborative meeting the investor-owned utilities will submit via advice letter a proposal to resolve the deliverability issue. Energy Division shall act on the Advice Letter at least 30 days before the first auction is scheduled to be held. ~~The investor-owned utilities shall require the seller to apply for a deliverability study in order to count generation for resource adequacy in the instance where no deliverability upgrades are needed to deliver the energy and count it towards resource adequacy.~~

~~13. The investor-owned utilities shall use a seller concentration limit of 20 MW per seller per auction.~~

CERTIFICATE OF SERVICE

I certify that I have by mail and e-mail this day served a true copy of

CORRECTED RECURRENT ENERGY COMMENTS ON DRAFT RESOLUTION E-4414, IMPLEMENTING THE RENEWABLE AUCTION MECHANISM

on the addressess, all copy recipients listed, and all parties or their representatives shown on the service lists for R.ll-05-005 and R.08-08-009.

Dated: August 16, 2011 at Mill Valley, California.

/s/ *John Nimmons*
Counsel for Recurrent Energy