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

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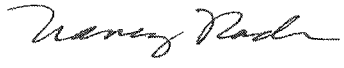
| Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program. | Rulemaking 11-05-005 (Filed May 5, 2011) |

# NOTICE OF EX PARTE COMMUNICATION BY CALIFORNIA WIND ENERGY ASSOCIATION

In accordance with California Public Utilities Commission ("Commission") Rule of Practice and Procedure 8.3, the California Wind Energy Association ("CalWEA") respectfully submits this notice of *ex parte* communication.

On Thursday, November 3, 2011, CalWEA sent a letter to President Peevey, Commissioner Simon, Commissioner Florio, Commissioner Sandoval, and Commissioner Ferron. A copy of the letter was also sent to Ed Randolph, Director of the Energy Division; Steve Berberich, the CEO of the California Independent System Operator Corporation; and all parties on the service list in Rulemaking 11-05-005. The letter describes the negative effects on the California renewable energy market resulting from the current approaches to Commission evaluation of material amendments to power purchase agreements and Commission and utility evaluation of the resource adequacy benefits associated with renewable energy projects, and the letter proposes revisions to the current processes to remedy such negative effects. The letter also encourages the Commission to address these issues further through Rulemaking 11-05-005. A copy of the letter is attached to this notice.

Respectfully submitted,



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***On Behalf of the California Wind Energy Association***

November 3, 2011

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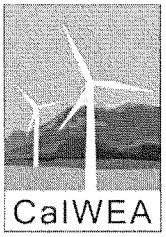


California Wind Energy Association

November 3, 2011

**VIA MESSENGER**

The Honorable Michael R. Peevey, President
The Honorable Timothy Alan Simon, Commissioner
The Honorable Mark J. Ferron, Commissioner
The Honorable Catherine J. K. Sandoval, Commissioner
The Honorable Michel Peter Florio, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: R. 11-05-005 (Implementation and Administration of the California Renewables Portfolio Standard Program)**

Dear President Peevey and Commissioners:

The California Wind Energy Association ("CalWEA") is providing this letter because the market for renewable energy in California fostered by the California Renewables Portfolio Standard ("RPS") program is dysfunctional in two very significant respects. As the steward of this program, we hope that you can help to fix the problems.

First, a permissive approach to Commission evaluation of material amendments to power purchase agreements ("PPA") has resulted in a vibrant secondary market in which PPAs are bought and sold without a need to actually develop the underlying projects; developers can seek amendments to conform the PPA to the developer's preferred project, even if this entails the use of an entirely different technology. In turn, the ease with which a PPA can be amended has encouraged a speculative approach to solicitations; a winning bidder currently has the opportunity to sell its PPA to a third party if the original project proves unviable.

Second, an unduly narrow approach to the evaluation of resource adequacy ("RA") benefits has resulted in a commercial preference among buyers for projects that could cause transmission upgrades to be built at a cost that is greater than the RA benefits the project is expected to provide – often excessively so, and with long associated lead-times. In addition to the obvious detriment of paying more for RA than the RA is worth, the effect of this misalignment has been tremendous uncertainty for otherwise viable projects, higher costs for these projects, and penalties in the bid evaluation process, all of which will ultimately increase costs to ratepayers.

CalWEA further describes these issues, and offers potential solutions, below. Moreover, CalWEA encourages the Commission to formally address these issues through Rulemaking 11-05-005.

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**The Secondary PPA Market**

The Commission's current permissive approach to evaluation of PPA amendments has led to a secondary market in which executed PPAs are bought and sold, often to be used for an entirely separate project, even one employing an entirely different technology. The existence of this secondary market has encouraged speculative bidding, as the signed PPA itself has now become a valuable commodity independent of the underlying project. This speculative bidding harms the renewable energy market, and ultimately ratepayers, because it encourages a "race to the bottom" in which bidders seek only to obtain a PPA, without consideration of whether they will actually be able to deliver on the PPA commitments because they assume they will be able to amend the PPA later or sell the PPA to a third party. In turn, the subsequent transfers to third parties or PPA amendments delay the actual development of renewable generation and could introduce transaction costs that ultimately increase costs to ratepayers. Meanwhile, developers that offered viable projects that could have been selected in the original solicitation turn their attention elsewhere, or are left without a market for their viable projects.

The size of this secondary PPA market is (and if unchecked, will likely remain) significant. California's high contract failure rates -- 24% on a capacity basis, over 30% based on number of contracts[1] -- is much higher than in other states. Those rates are very likely to rise: one market analyst projects future contract failure rates of between 22% and 55%, depending on the technology.[2] This represents significant demand that should be made available for competition through RPS solicitations among the full range of suppliers in the renewable energy market rather than allowing the original (potentially speculative) bidder to restructure its project and PPA or sell its PPA to the highest bidder to be adapted to a different project.

To curb the speculative frenzy, the Commission should encourage the IOUs to enforce the milestone provisions of PPAs in their portfolios, and the Commission should adopt clear principles for the review of proposed PPAs and PPA amendments. In addition, the Commission should clarify the methodology for evaluating pricing in proposed PPAs. Specifically:

- Signed PPAs proposed to the Commission should be evaluated and acted upon in a more expedited fashion to ensure that developers can fulfill the PPAs they have executed. The current lag between PPA execution and Commission approval has led to developers being exposed for expenditures on projects that may not be approved, or being unable to meet the terms that were agreed upon in a different market environment.
- Proposed PPAs should be compared only to other executed PPAs, not bids simply submitted into the RFO process, because executed PPAs provide pricing associated with binding commitments and at-risk credit support. In contrast, bids lack any assurance that the bidder will deliver on the proposed price or timing.
- PPA amendments that do not materially alter the original LCBF analysis of the project should not require re-evaluation of price relative to current market pricing for executed PPAs or other issues. These types of amendments would include, for example, clarifying contractual language, adding

[1] CalWEA calculation based on CPUC RPS contract database as of October 2011, based on proposed new project capacity, comparing approved contracts to capacity of withdrawn and terminated contracts.
[2] "North America Renewable Power Advisory," IHS Emerging Energy Research (July 28, 2011).

updated Commission-required non-modifiable terms, revisions to the site that do not change the point of interconnection, change in technology vendor or model (but not technology type), or extensions of milestones for reasons outside of the developer's reasonable control.

- PPA amendments that materially alter the original LCBF analysis of the project (e.g., price increases, changes in technology type, or extensions of milestones for reasons within the developer's reasonable control such as failure to post collateral as required by the CAISO in accordance with the interconnection process, or failure to submit a permit application) should be evaluated closely with a disposition towards rejection by the Commission. Under these circumstances, the developer would be free to compete against the remainder of the renewable energy market through the RPS program's solicitation process for a replacement PPA, which would be reviewed by the Commission on a fresh basis and in relation to then-current market conditions.

While drawing the line between material and non-material impacts to the original LCBF evaluation for a given project is admittedly a difficult exercise, it is nonetheless a necessary exercise because it will allow the Commission to send a clear message to the renewable energy market that developers executing a PPA are expected to deliver in accordance with their commitments. By providing such a clear message, the Commission can deter speculative bidding, improve the quality of projects offered by bidders, and restore confidence in California's renewable energy market.

**Resource Adequacy Valuation**

The utilities' current approach to valuing renewable energy resources assumes that the generator will either have "energy-only" status, and not provide any RA value, or "full capacity" status, and provide RA value in accordance with the Commission's decisions relating to calculation of qualifying capacity.[3] This unduly narrow approach has resulted in a preference among utility buyers for projects that have "full capacity" status and provide some level of RA capacity.[4]

However, a market that requires all resources to obtain "full capacity" status does not provide the most efficient approach to planning the transmission system. To obtain "full capacity" status, a project must elect such status in the California Independent System Operator Corporation ("CAISO") interconnection process (or the utilities' equivalent distribution-level processes)[5] and then execute an interconnection agreement that requires additional Delivery Network Upgrades (as defined in the CAISO tariff) to be built. The CAISO currently designs Delivery Network Upgrades to meet extremely rare system conditions – essentially, operating conditions that might arise, literally, once every several thousand years. Thus, the typical result of the market's current de facto requirement to obtain "full capacity" status is over-designed, extremely expensive upgrades that present enormous market-entry barriers to generators (the costs are typically initially funded by the interconnecting generator, subject to refund after achieving commercial operation) and increased costs for utility customers (who ultimately fund such upgrades through the transmission component of rates).

Requiring all resources to obtain "full capacity" status does not provide the most efficient approach to meeting RA procurement obligations either. In some cases, the cost for these upgrades is significantly

[3] *See* D. 11-04-030 at 20-22.
[4] *Id.*
[5] *See* CAISO Tariff Appendix Y Appendix 1§ 3.

higher than the cost to obtain an equivalent quantity of RA capacity in the RA market. To address these circumstances, the Commission should provide developers and utilities the flexibility to forego supply of RA capacity from the renewable generator (i.e., allow it to proceed with "energy-only" status), either through a bid that does not provide any RA capacity, or through a bid in which the developer has packaged RA capacity supplied by a third party with the "energy-only" renewable generator. This approach would allow utilities to meet both RPS and RA procurement obligations in a more efficient manner by substituting low-cost third-party RA capacity for the high-cost transmission upgrades required to provide RA directly from the renewable generator when such upgrade costs exceed the cost of third-party RA supply. To implement this flexibility, the LCBF process should be modified to value expressly and transparently the renewable energy and RA components of a bid on independent bases, including careful Commission oversight of the proposed RA-related terms of the IOUs' RPS solicitation protocols and pro forma RPS PPAs. The LCBF analysis should also factor in the cost of any expected curtailment to generators in the area. This would allow the Commission and the market to evaluate and deliver the least-cost solution to RA and RPS procurement obligations.

Additionally, to facilitate a long-term solution to the high cost of "full capacity" status and to address significant transmission constraints, the Commission should encourage the CAISO to (1) revise the methodology and assumptions used in its interconnection study processes to reflect more reasonable system conditions, and (2) address major transmission constraints in its transmission planning process, where the Federal Energy Regulatory Commission has authorized the CAISO to plan for "policy-driven upgrades" to promote the achievement of state policy goals. Done correctly, we would expect to see such planning produce the type of foundational upgrades that were included in the 2010 Conceptual Transmission Plan developed under the state's Renewable Energy Transmission Initiative ("RETI"). Taking these two important steps would relieve renewable generators of the financial and transmission-timeline burdens they now face, which in turn would promote greater generator competition and resolve CAISO interconnection queue bottlenecks, while assuring transmission system reliability.

CalWEA encourages the Commission to address these concerns through Rulemaking 11-05-005. Thank you for your consideration of these issues.

Sincerely,

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Steve Berberich, President and Chief Executive Officer, California Independent System Operator
All parties on service list for Docket No. R. 11-05-005