GOODIN,
MACBRIDE,
SQUERI, DAY &
LAMPREY, LLP

Jeanne B. Armstrong, Attorney at Law

April 9, 2012

VIA E-MAIL

Paul Douglas
California Public Utilities Commission
Tariff Files, Room 4005
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Draft Resolution E-4489: Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company

Dear Mr. Douglas:

In this letter, the Solar Energy Industries Association (SEIA) and the Large-Scale Solar Association (LSA)(collectively the "Joint Solar Parties") provide comments on the Draft Resolution E-4489 (Draft Resolution) circulated on March 20, 2012. The draft resolution addresses Pacific Gas and Electric Company's (PG&E) Advice letter 4000-E and additional issues raised on the Energy Division Staff's own motion, all of which pertain to the Commission's Renewable Auction Mechanism (RAM) Program.

I. Introduction

Through its Advice Filing, PG&E requested the following changes to the RAM Program:

- To increase the contract extension period due to regulatory delay from 6 months to 12 months; and

- A change to its current product allocation between baseline, as-available peaking, and as-available non-peaking for its second RAM solicitation.

The RAM Program changes brought forward on Energy Division's motion are:

- Creating a unilateral termination right for the investor owned utility (IOU) when transmission upgrade costs increase by more than 10% beyond study estimates provided during bid selection; and

T 415.392.7900 F 415.398.4321
www.goodinmacbride.com
505 Sansome Street, Suite 900 | San Francisco, CA 94111

Direct 415.765.8449
E jarmstrong@goodinmacbride.com

- Allowing producers the option to either bid their projects as energy-only or bid their projects with Full Capacity Deliverability Status.[1]

With respect to the two requested changes sought by PG&E, the Draft Resolution would deny PG&E's request to reallocate available capacity across product categories for its second RAM solicitation, but grant, with certain modifications, its request to extend the period prior to when projects are required to come on line. Moreover, the Draft Resolution would adopt both of the program changes advanced by the Energy Division. As detailed below, with the exception of the change to the required on-line date, the Joint Solar Parties have significant concerns regarding the manner in which the Draft Resolution addresses the remainder of the program changes at issue.

II. Comments

A. Extension of Time Period to Reach Commercial Operation

As noted in the Draft Resolution, Decision 10-12-048 (the RAM Decision) requires that selected projects achieve commercial operation within eighteen (18) months after contract execution, with the potential for one six (6) month extension for regulatory delay. In its Advice Letter, PG&E suggested maintaining the 18 month commercial operation deadline, while providing an option for a 12 month extension instead of a 6 month extension for regulatory delays. While the Draft Resolution would keep the allowed 6 month extension period, it would increase from 18 to 24 months the initial period afforded projects to reach commercial operation. While the Joint Solar Parties maintain that it is imperative that the RAM Program have strict commercial on-line date requirements in order to streamline program administration and attract higher viability projects, it recognizes that certain realities (e.g., permitting and interconnection challenges resulting from the CAISO's cluster studies) necessitate an increase in the time allowed. Accordingly the Joint Solar Parties submit that the change in the time period allowed for projects to reach commercial operation meets the threshold requirement for making changes to the RAM program -- i.e., that it is necessary to improve the RAM program[2] -- as set forth in the RAM Decision.

B. PG&E's Requested Reallocation of MWs Across Product Categories

In Advice Filing 4000-E, PG&E, based primarily on market information received from its first RAM solicitation, requested approval to modify its RAM product allocations from 35 MW for each of the three product categories to 85 MW for the peaking as-available category; 10 MW for the non-peaking as-available category; and 10 MW for the baseload category. The Draft

---

1 Producer is required to provide an estimate to the Buyer of when it will be able to achieve full deliverability in the instances where Producer chooses to bid its project with Full Capacity Deliverability Status.

2 D.10-12-048, Section 12.1, page 74.

Resolution would deny PG&E's request, theorizing that the reduction in the allocation available to the baseload category "would discourage the participation of baseload developers" and espousing that "because the IOUs have had only limited experience with the RAM Program and have only held one RFO, it would benefit developers of baseload and off-peak intermittent projects, which were underrepresented in the first RFO, to maintain the same product category allocations for the second RAM RFO."[3] The rationale utilized by the Draft Resolution as basis for denying PG&E's request to change it product allocation does not withstand scrutiny.

To state PG&E's requested reallocation should not be allowed because it has limited experience with the RAM program denies market realities. In this regard, there are approximately 240 MW of RAM-eligible baseload generation projects in the current WDAT and CAISO interconnection queues, while there are over 6 GW of RAM-eligible Solar PV projects in those same queues. These queues are indicative of the market size for the respective products. This differential in market size was clearly evident in PG&E's first RAM solicitation. Indeed, as illustrated in PG&E's recent advice filing, it received only four eligible baseload proposals and three eligible as-available non-peaking proposals, while it received 110 as-available peaking proposals. With its currently required allocation of 35 MWs per product category, the result of PG&E's first RAM solicitation was executed contracts with one baseload project, one as-available non-peaking and two as-available peaking projects.[4] Given the gross disparity of the number of projects bid, the fact that only two as-available peaking projects received contracts does not reflect market realities.

Moreover, the Commission should bear in mind that given the current market size for baseload projects, that by requiring PG&E to retain the current product allocations and attempt to procure 55 MWs of baseload projects (35 MWs plus the 21 MWs of baseload projects which were not secured in the first RAM solicitation) it is potentially forcing PG&E into a situation of contracting with less viable projects at higher costs. Such a result is not in the best interest of ratepayers.

The Commission granted the IOUs the "flexibility to modify their product allocations based on market conditions and experience."[5] The results of PG&E's first RAM solicitation clearly illustrate that a 35 MW per product type allocation does not comport with market realities. PG&E is acting in the interest of ratepayers by increasing the allocation to peaking as-available resources and procuring from a more robust pool of applicants. Finally, the Resolution determined that the market experience from the first solicitation was sufficient to change the commercial operation date, therefore the fact that PG&E has only limited RAM experience, should not be basis for denying PG&E's request.

---

3 Draft Resolution, at p.5.

4 *See* Pacific Gas & Electric Company Advice Filing 4020-E Advice Letter Filing of PG&E's Renewable Auction Mechanism Power Purchase Agreements (March 30, 2012)

5 Resolution E-4414, at p. 11.

The Resolution should be modified to grant PG&E's request to reallocate available capacity across product categories for its second RAM RFO.

C. Unilateral Termination Right

The Draft Resolution would modify the RAM Decision so as to provide that "each investor-owned utility may include in its RAM PPAs a unilateral termination right for Buyer in instances where the cost of ratepayer funded or reimbursed transmission upgrade costs increase by more than 10% over the study estimate provided at the time of the RAM RFO." The basis for this proposed change is concern "that a project may be selected by an IOU from the RAM RFO partially on the basis of its low projected transmission upgrade costs, but that those costs could increase significantly after contract execution." The Draft Resolution, however, presents no evidence that such is actually occurring. Given the requirement in the RAM decision that "[a]ny modifications proposed should be based on evidence that the modification is *necessary* to improve the RAM program,"[6] and the Draft Resolution's failure to make any showing that proposed change is needed, the Joint Solar Parties question the basis upon which such change to the RAM program is being made. Consistent with the RAM Decision, the Joint Solar Parties would request that the required showing that the "modification is necessary to improve the RAM program" be made prior to the Commission adopting any unilateral termination right based on increased transmission upgrade costs.

That said, the Joint Solar Parties also have concerns regarding the manner in which the proposed unilateral termination right is framed in the Draft Resolution; namely that (1) the termination right is triggered when the transmission upgrade costs reach a level of 10% over the cost estimate provided at the time of the RAM RFO; and (2) the termination right is held by the IOU for the life of the project. With respect to the former concern, a 10 % trigger is inappropriate. Phase I Studies performed by the CAISO provide transmission cost upgrade estimates that are only "good faith estimates" and, as a result, can have a larger margin of error. Accordingly, before any termination right is triggered due to an increase in transmission upgrade costs, the developer should be afforded a margin of error comparable to that which was contained in its Phase 1 Study.

Moreover, the Draft Resolution fails to recognize that transmission costs can continue to be allocated to a project long after it goes on-line. As currently stated, the IOU would retain the termination right throughout the term of the PPA and would be allowed to terminate the contract at any time that the transmission upgrade costs allocated to the project increase by 10% from the initial estimate. This is untenable. Projects will not be able to obtain financing with such an open ended termination right over which, based on the manner which transmission upgrade costs are allocated, the developer has very little control. In order to secure financing, developers need to assure lenders that a project PPA will remain in force throughout its term and that any event that gives rise to a termination right is either subject to a developer's control or is subject to a developer's or lender's ability to cure. It would be impossible for a developer to guarantee to a

---

6 D.10-12-048, Section 12.1, page 74.

potential lender that the proposed termination provision would not be triggered, and the Draft Resolution provides no opportunity for a cure to prevent the exercise of the termination right. Should the Commission proceed with adopting a termination provision tied to transmission network upgrade costs, then it must impose a prescribe period of time in which the IOU can invoke it. SEIA would recommend that the IOU only be allowed to exercise the termination right if the cost of transmission upgrades increases by more than 10% between the Phase I interconnection study and the Phase 2 interconnection study. Moreover, the developer should be provided the opportunity to pay such increased costs in lieu of termination.

The Joint Solar Parties note that the Draft Resolution points to Southern California Edison Company's solar program in which changes were recently made to afford SCE a unilateral termination right as basis for making a comparable change to the RAM program. This attempt at a one-size-fits all mode of program design does not take into account the marked differences between the SCE solar photovoltaic program (SPVP) and the RAM program. The SPVP focuses on rooftop projects smaller than two MW that are less likely to require network upgrades, whereas the RAM program permits projects up to 20 MW, which have a higher likelihood of requiring network upgrades. Such significant differences must be taken into account prior to imposing on one program a provision which was design for another.[7]

D. Bidding Options - Energy Only or with Full Capacity Deliverability Status

The Draft Resolution would give producers the option of bidding their project as energy only or with Full Capacity Deliverability Status (FCDS). With respect to the latter category, the producer would not have to have achieved FCDS at the time of the RFO, rather it would have to provide the date by which it expects to attain FCDS. The IOUs will be permitted to incorporate the value of resource adequacy benefits provided by a seller with full capacity deliverability status when it evaluates the bids received in a RAM RFO. While the Joint Solar Parties believe that such dual bidding structure is worthy of exploring, implementation of such structure is premature and should not be utilized for the purposes of the IOU's second RAM solicitation.

As noted in the Draft Resolution, a clear understanding of how each IOU values resource adequacy benefits is of primary importance to producers in making an assessment of whether to bid energy-only or with FCDS.[8] While each IOU has submitted a qualitative description of its methodology for calculating the value of resource adequacy benefits (which are appended to the Draft Resolution), the information provided is insufficient for producers to make this assessment. Prior to changing what has been structured as an energy only program to one in which producers can also bid FCDS, the Commission must assure that the valuation methodology for such FCDS is transparent, with sufficient information provided to allow producers to make a reasoned decision about how to structure their projects.

---

7 SEIA did not comment on the Commission resolution which adopted the unilateral termination right as part of the SPVP and takes no position on it herein.

8 Draft Resolution at p.13, footnote 9.

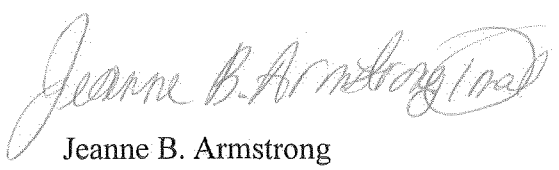
Accordingly, the Joint Solar Parties recommend that the resolution be modified such that the proposed dual bidding structure not be implemented for the purposes of the upcoming RAM solicitation. Rather, the IOUs should be directed to submit to the Energy Division information, available to all stakeholders, which provides the quantitative valuation of resource adequacy that would be used in the bid process. Once such information is submitted a workshop should be convened so that this information can be vetted and stakeholders can ask clarifying questions. After such time, the Commission can consider the adoption of the dual bidding structure for all ensuing RAM solicitations.

III. Conclusion

For the reasons stated herein, the Joint Solar Parties request that the Commission modify the Draft Resolution in the manner set forth above. The Joint Solar Parties look forward to continuing its work with the IOUs and Commission Staff to ensure a viable and cost-effective RAM program.

Very truly yours,

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP

By 

Jeanne B. Armstrong

Counsel for the Solar Energy
Industries Association

cc: Commissioner Michael Peevey, President (mp1@cpuc.ca.gov)
Commissioner Timothy Simon (tas@cpuc.ca.gov)
Commissioner Michel Florio (mfl@cpuc.ca.gov)
Commissioner Katherine Sandoval (cjs@cpuc.ca.gov)
Commissioner Mark J. Ferron (fer@cpuc.ca.gov)
General Counsel Frank Lindh (frl@cpuc.ca.gov)
Chief Administrative Law Judge Karen Clopton (kvc@cpuc.ca.gov)
Julie A. Fitch, Director, Energy Division (jf2@cpuc.ca.gov)
Edward Randolph, Director, Energy Division (efr@cpuc.ca.gov)
Adam Schultz, Energy Division (adam.schultz@cpuc.ca.gov)
Service List, R.11-05-005

3326/003/X139306.v1

CERTIFICATE OF SERVICE

I certify that I have by e-mail this day served a true copy of the Solar Energy Industries Association (SEIA) and the Large-Scale Solar Association (LSA) (collectively the "joint Solar Parties) Comments on the Draft Resolution E-4489 on all parties in these filings as follows:

Paul Douglas, Energy Division (an original and 2 copies by Hand Deilvery) and e-mail to EDTariffUnit@cpuc.ca.gov & pac@cpuc.ca.gov
Commissioner Michael Peevey, President (mp1@cpuc.ca.gov)
Commissioner Timothy Simon (tas@cpuc.ca.gov)
Commissioner Michel Florio (mf1@cpuc.ca.gov)
Commissioner Katherine Sandoval (cjs@cpuc.ca.gov)
Commissioner Mark J. Ferron (fer@cpuc.ca.gov)
General Counsel Frank Lindh (frl@cpuc.ca.gov)
Chief Administrative Law Judge Karen Clopton (kvc@cpuc.ca.gov)
Julie A. Fitch, Director, Energy Division (jf2@cpuc.ca.gov)
Edward Randolph, Director, Energy Division (efr@cpuc.ca.gov)
Adam Schultz, Energy Division (adam.schultz@cpuc.ca.gov)
Service List, R.11-05-005

Dated April 9, 2012 at San Francisco, California.

Melinda LaJaunie

3326/003/X139329.v1