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Energy Division
California Public Utilities Commission
505 Van Ness Avenue
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Re: Interstate Renewable Energy Council's Comments on Draft Resolution E-4489

Dear Mr. Randolph:

The Interstate Renewable Energy Council, Inc. (IREC)[1] respectfully submits these comments on Draft Resolution E-4489 addressing changes to the Renewable Auction Mechanism ("RAM"). IREC supports the Draft Resolution's modifications to extend the Commercial Operation Date ("COD") and to allow the Investor Owned Utilities ("IOUs") to consider whether a project offers Resource Adequacy benefits in evaluating RAM bids. IREC believes, however, that the modification allowing IOUs to unilaterally terminate contracts where transmission network upgrade estimates are exceeded is extremely problematic and needs further consideration.

I. Extension of the Commercial Operation Date to Accommodate Realistic Interconnection Timeframes is Appropriate.

In light of the extensive timeframes associated with the cluster study process under the IOUs' Wholesale Distribution Access Tariffs ("WDATs"), IREC supports the Draft Resolution's proposed extension of the COD to 24 months from CPUC approval with one 6-month extension for regulatory delays.[2]

II. A Percentage Cap on Transmission Network Upgrade Costs that Exceed Original Estimates does not Ensure that Ratepayers Avoid Excessive Upgrade Costs.

The Draft Resolution proposes to allow the IOUs to at any point unilaterally terminate RAM contracts if the ratepayer reimbursed transmission system upgrade costs exceed by more than ten percent the estimates provided by the producer when it submitted its bid.[3] IREC appreciates that

[1] IREC is a non-profit organization that has worked for nearly three decades to accelerate the sustainable utilization of renewable energy resources through the development of programs and policies that reduce barriers to renewable energy deployment.

[2] *See* Draft Resolution E-4489 at 8-10.

[3] Draft Resolution E-4489 at 10-11.

the intent of this change is to continue the original RAM Resolution's effort to ensure that ratepayer reimbursed transmission network upgrades are appropriately considered when evaluating the competitiveness of different RAM projects. However, the Draft Resolution's proposed method for resolving this problem needs further consideration for a number of reasons, discussed below. IREC believes the Commission should table this modification to the RAM program until additional information about the need for the change and how it would work is provided.

Currently, a RAM project is evaluated based upon the bid price plus the estimated costs of ratepayer funded transmission network upgrades.[4] A project that requires significant ratepayer-funded upgrades is not necessarily a poor investment if other circumstances make the overall bid price lower when those upgrades are taken into account. The estimate of upgrade costs provided at the time of a bid is thus clearly important in evaluating the merits of a project. If actual costs of the upgrades are higher than estimated, it may mean that ratepayers end up paying for projects that are overvalued. This principle is also true in the converse, however, as projects whose estimates turn out to be high may be undervalued and therefore not receive a contract.

A. Actual Costs for Transmission Network Upgrades May Not be Known Until After a Project Has Been Fully Constructed and May Still Have to be Reimbursed by the Ratepayers.

The estimate given for transmission network upgrades is a complex issue because the amount and certainty of the estimate varies depending upon the study process through which the project proceeds.

- Fast Track projects proceeding under SCE or PG&E's WDATs may not even have an estimate of transmission network upgrades to provide at the time a bid is submitted. Generally, projects are ineligible for Fast Track if they trigger transmission network upgrades.[5] However, there is a significant caveat in those provisions that makes a developer liable for any upgrades later determined to be attributable to the project.[6] This provision is most likely to be triggered as a result of short-duty contributions determined through the annul cluster study process, but the provision may be triggered at any point.
- For Independent Study Process (ISP) projects, the developer will receive only a non-binding good faith estimate of transmission network upgrades in their System Impact Study and a more refined estimate in their Facilities Study.[7] The tariffs state that the costs for transmission network upgrades "shall be assigned solely to the Interconnection Request" except for short-circuit duty contributions later determined through a cluster study.[8] However, the tariffs do not explicitly state whether the IOU can seek additional funds after the Interconnection Agreement is signed and the developer has completed its

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4 Resolution E-4414 at 18 (Aug. 18, 2011).
5 *S*SCE WDAT at 6.5.10; PG&E WDT at 2.3.3.
6 *S*SCE WDAT at 6.6, 6.7, 6.11.5; PG&E WDT at 2.2.2, 2.2.3, 2.4.1.1.
7 SCE WDAT at 5.8.1.1, 5.8.2.1, 5.8.2.5; PG&E WDT Att. 7 at 5.0, Att. 8 at 4.0.
8 SCE WDAT at 5.8.1.1, 5.8.2.8; PG&E WDT at 3.8

financial security postings.[9] Thus, it is not clear when a developer would learn that the estimates have been exceeded or when the utility could exercise the termination provision.

- Finally, Cluster Process projects will be given an estimate of their "maximum cost responsibility" following the Phase I study, which is the basis of the maximum financial security that must be submitted.[10] A more refined estimate is given following the Phase II study, presumably to only decrease the cost responsibility if the original estimate is indeed a "maximum."[11] As with ISP projects, it is not clear whether the IOU could seek further funds from the Interconnection Customer if the ultimate costs exceed those estimates at some later date.

Many developers may not know the actual cost of the upgrades until they have already constructed their own facility because the timelines for the construction of upgrades is lengthy, and many developers will submit bids following the completion of a System Impact Study or the Phase I study. Indeed, as discussed in the bullets above, since it is unclear if the cost responsibility for transmission network upgrades for ISP and/or cluster study projects terminates when their financial security postings are complete, it is not clear when it would be determined that a project's cost estimates were exceeded.

Whether the upgrades are constructed within the original cost estimates is entirely outside of the developer's control. Project developers who receive RAM contracts must begin purchasing equipment and commence construction in an expedited manner in order to ensure that they are able to meet the COD deadlines discussed above. In most cases, projects will begin construction at the same time that the IOU completes construction of any distribution or network upgrades. In order for the IOU to commence construction of upgrades, the developer will have already paid for the estimated deliverability upgrades and transmission network upgrades.

Therefore, providing the IOUs with unilateral termination rights that may not be exercised until a developer has already made significant investments in a project asks developers to take risks that will ultimately raise the overall costs of RAM projects and possibly make them impossible to finance. It could be very difficult to obtain financing if there is a complete termination right provided to the utility for costs that are entirely within the utility's control and that may not be determined until most of the developer's own investment is complete.

Finally, and crucially, it does not appear to IREC that this termination right would even protect ratepayers from having to pay for the transmission network upgrades. Since the final costs of upgrades are not determined until the end of the construction process, the upgrades will have already been built by the time it is known whether the estimates were exceeded. The obligation to reimburse the developer for the transmission network upgrades exists as long as the project achieves COD.[12] Thus, the utility may be able to terminate the contract with the developer even after COD, but that does not relieve the ratepayers of the obligation to reimburse the developer

[9] SCE WDAT at 5.8.2.8; PG&E WDT at 3.8
[10] SCE WDAT at 4.5.3, 4.5.4, and 4.5.5; PG&E WDT at 4.8.2, 4.8.3.1.
[11] SCE WDAT at 4.6.1, 4.6.5, 4.6.4.1; PG&E WDT at 4.8.3.1, 4.16.
[12] CAISO GIP, Appx. Y at 12.3.2

for the transmission network upgrades it funded. To cancel a contract at this point would waste ratepayer dollars and leave fully constructed projects to sit dormant without a power purchase agreement.

B. The Use of a Percentage Does Not Appropriately Measure Excess Costs Since it is Relative to the Amount of Actual Upgrades Required.

A further problem with the Draft Resolution's proposed modification is the use of a percentage to determine excess costs. The use of a percentage adder is inappropriate because it does not ensure that the actual costs of a project are excessive in comparison to other projects. The estimated costs of transmission network upgrades will vary from minor to significant for each project depending on the type of upgrade needed. Thus, a ten percent increase in the price for a project with minor upgrades may not necessarily make that project a worse investment than other projects that it was competing against. In other words, a ten percent increase on upgrades estimated to cost $100,000 ($10,000) is not comparable to a ten percent increase on upgrades estimated to cost $1 million ($100,000). Nor does this percentage increase tie back to the total project price: i.e., the bid price plus the estimated transmission network upgrade costs. It is not the percentage by which an upgrade exceeds the original estimate that determines whether the project is not competitively priced; rather, it is the actual amount by which the estimate was exceeded combined with the overall bid price.

In light of these considerations, the Commission should not adopt the Draft Resolution's proposed termination right for excess upgrade costs. IREC believes this provision could actually result in ratepayers funding transmission network upgrades that go unused. At the very least, considerably more information is necessary to determine whether these estimates are being exceeded on a sufficiently frequent and significant basis to necessitate a provision that exposes developers to risks entirely outside their control. In addition, the Commission would need to specify at what point the termination right could be exercised as it is not clear when the final costs of transmission network upgrades are necessarily known.

III. Consideration of Full Capacity Deliverability Status in Evaluation of Bids Can Encourage Utilities to Acquire Resource Adequacy in an Economic Manner, but Developers Need to Have Access to Information Regarding Resource Adequacy Value to Bid Appropriately.

IREC has recently filed comments with the Commission[13] and IOUs[14] regarding whether the Commission should require distributed generation projects participating in the SPVP and SB 32 programs to obtain Full Capacity Deliverability Status ("FCDS"). IREC's central concern with requiring projects participating in the Commission's distributed generation procurement programs to obtain FCDS is that the IOUs have not shown that the investments necessary to obtain that status are cost effective for ratepayers when there might be more economical ways of meeting IOU Resource Adequacy needs. This concern is coupled with the fact that the Deliverability Assessment process is cost intensive, time consuming, and not readily available

[13] IREC Reply Comments on Draft Resolution E-4453, Jan. 17, 2011.
[14] IREC Redline Comments on IOU Proposed Standard Form Contract for SB 32, March 5, 2012. □□□

for projects that are otherwise eligible for the more cost and time efficient Fast Track or Independent Study interconnection processes.

The Draft Resolution proposes to allow projects to bid in either as Energy-Only or with FCDS and to allow the IOUs to consider whether a project has FCDS in ranking bids.[15] It does not require that projects have achieved FCDS in order to begin operation. The Draft Resolution's proposed approach to this issue is a step forward that IREC generally supports, although we would like to propose one refinement to ensure that it works as intended.

The value of the Resource Adequacy adder needs to be public so that developers can make informed decisions about whether the additional investment is appropriate for their project. Allowing the IOUs to consider whether a project offers FCDS in evaluating competing bids has the potential to allow the IOUs to acquire additional MWs to meet their Resource Adequacy requirements from distributed generation projects in a manner that reflects the actual value that this additional feature has to IOUs. By defining a specific market price for FCDS, this process can encourage projects that are able to complete the Deliverability Assessment and associated upgrades at a reasonable cost to obtain a competitive advantage over Energy Only projects, while also increasing the likelihood that ratepayers will only be paying for economical deliverability upgrades. Making the value of Resource Adequacy public will allow this market-based selection process to function properly.

It is not clear from the summary of IOU Resource Adequacy Methodologies provided in Attachment A of the Draft Resolution that a bidder will be able to determine in advance how the IOUs will value the addition of FCDS. Each of the IOUs appears to provide a slightly different explanation on how they determine that value. For example, PG&E's methodology relies upon its "forecast of avoided capacity costs" but it is not clear to IREC whether that information can be determined by a developer evaluating the costs of deliverability upgrades for their project. Thus, the Commission should require the IOUs to provide sufficient information to developers to enable them to make rational choices regarding acquisition of FCDS. This information needs to be made available as soon as possible as developers must make choices about pursuing a Deliverability Assessment and associated upgrades during the interconnection process prior to submitting their bids into the next RAM auction.

In light of the amount of time needed to complete a Deliverability Assessment and have the necessary deliverability upgrades constructed, IREC believes it is appropriate to allow projects to come on line and to begin to deliver energy prior to completion of those upgrades. However, since projects bidding in with the intent of providing FCDS will have a competitive advantage over Energy Only projects during the auction, they must be required to ultimately provide that RA-quality capacity in a timely manner.

The Interstate Renewable Energy Council appreciates the opportunity to submit these comments.

[15] Draft Resolution E-4489 at 11-13.

Respectfully submitted,

/s/ Sky C. Stanfield

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SUBJECT INDEX OF RECOMMENDED CHANGES

Full Capacity Deliverability Status:
IREC recommends the Commission adopt the modifications to Ordering Paragraphs 12, 13, & 15 of E-4414. In addition, the Commission should require the IOUs to make public the figures they will use to determine the actual Resource Adequacy benefits of projects bidding in with FCDS and should allow the IOUs to include a provision in the contract that allows for termination or financial penalties if the project never achieves FCDS.

Termination; Excessive Upgrade Costs:
IREC recommends the Commission reject the proposed modification to Ordering Paragraph 11 of Resolution E-4414 to allow each IOU a unilateral termination right where the cost of ratepayer funded or reimbursed transmission upgrade costs increases by more than 10% over the study estimate provided at the time of the RAM RFO.

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APPENDIX A: PROPOSED FINDINGS AND CONCLUSIONS AND ORDERING PARAGRAPHS

Proposed Findings and Conclusions

~~7. Creating a unilateral termination right in the Renewable Auction Mechanism Power Purchase Agreement for the utility in instances when transmission upgrade costs increase by more than 10% beyond study estimates provided during bid selection serves a dual purpose: it protects ratepayers from excessive, unaccounted for transmission network upgrade costs, and ensures that producers will not risk Power Purchase Agreement termination if upgrade costs increase less than 10%.~~

[following findings should be re-numbered accordingly]

8. It would be an improvement to the Renewable Auction Mechanism program to allow producers to bid as either energy-only or with full capacity deliverability status; to allow the achievement of full capacity deliverability status to occur after the commercial operation date, so long as producers provide the date by which they expect to attain full capacity deliverability status and the contract contains an appropriate penalty if the status is never achieved; and to restrict the utility evaluation of the resource adequacy value to the years that it is actually provided.

##. Providing information to developers that enables them to determine how a utility will value Resource Adequacy benefits will allow the market to select the most cost-effective projects and help ensure ratepayers do not overpay or underpay for those benefits.

Proposed Ordering Paragraphs

5. The following changes to the investor-owned utilities Renewable Auction Mechanism pro forma power purchase agreements are adopted. The investor-owned utilities shall:

    - Increase the deadline by which producers must bring their projects online from eighteen (18) months to twenty-four (24) months after the date of Commission approval.
    - ~~Add a unilateral termination right if ratepayer funded transmission system upgrade costs increase by more than 10% over the estimates provided at the time of the Renewable Auction Mechanism solicitation.~~
    - Revise Full Capacity Deliverability Status. Producers have two options, either to bid their projects as energy-only or to bid their projects with Full Capacity Deliverability Status. 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. Achieving full capacity deliverability status shall not be a condition precedent to commercial operation but the contracts should contain an appropriate penalty if the status is never achieved.
    - Consider resource adequacy benefits and the cost of deliverability upgrades for Full Capacity Deliverability Status bids. The investor-owned utilities shall explain how they value resource adequacy ~~in their Renewable Auction Mechanism bidding protocols~~ within 30-days of this Resolution via a posting on their website.