



April 9, 2012

Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
EDTariffUnit@cpuc.ca.gov

**Re: Recurrent Energy Comments On Draft Resolution E-4489,
Modifying the Renewable Auction Mechanism**

Ladies and Gentlemen:

Recurrent Energy is pleased to provide these comments on Draft Resolution E-4489 (Draft Resolution or Draft), proposing modifications to the Renewable Auction Mechanism (RAM).

Headquartered in San Francisco, Recurrent Energy develops, owns, and operates distributed solar projects in North America and in emerging global markets. We now have over 500 MW of solar projects operating, in construction, or under contract, and more than 2 GW overall in our development pipeline (mostly ground-mounted systems from 5-20 MW, with some ranging up to 200 MW). We have competed in California RPS solicitations for large projects, in utility PV programs for smaller projects, and in the first RAM auction for projects up to 20 MW, and have participated actively in Commission rulemakings to help shape each of these programs. Recurrent Energy has been a strong supporter of the RAM concept, the Commission's December 2010 Decision Adopting RAM (D.10-12-048 or RAM Decision), and subsequent actions to implement RAM, and we believe that the robust response to the first RAM auction was an important indicator that the program as adopted is on track to meet or exceed its objectives.

Our comments on the Draft Resolution are summarized below and discussed in the following pages:

- **PG&E's request to re-allocate available capacity should be approved.** The request is expressly authorized by Resolution E-4414, soundly based on evidence of market conditions and experience in the first RAM auction, timely, and necessary to improve the RAM program. (Page 2)
- **The Commission should not create a unilateral termination right for transmission upgrade costs exceeding study estimates.** To do so would be inconsistent with Resolution E-4414's prohibition on the use of network upgrade cost caps, and there is no evidence that RAM projects are generating such costs for ratepayers, or that this modification is necessary to improve RAM. On the contrary, there is good reason for concern that the risk of unilateral termination for causes beyond a developer's control would make RAM projects unfinanceable. If convincing evidence of excessive upgrade costs emerges in future RAM Program Forums, the Commission can revisit the issue then and seek a resolution that limits any undue ratepayer exposure without undermining project financeability. (Pages 3-4)
- **An option to bid either energy-only or full capacity deliverability status (FCDS) can improve the second RAM auction, but only if early clarifications are provided.** Prospective bidders need the IOUs to specify the source of the cost information they will use to evaluate transmission adders, and to clarify that project bids may be for energy-only, FCDS, or both in the alternative. This should be done in the Tier 1 Advice Letters to be filed within seven days of the effective date of Resolution E-4489. (Pages 4-5)

1. PG&E's request to reallocate available capacity should be approved.

D.10-12-048 authorized the respondent utilities to request modifications to RAM based on evidence that the modification is necessary to improve the program.¹ Resolution E-4414 concluded that the IOUs should have the flexibility to modify their product allocations in future RAM auctions based on market conditions and experience, as long as they request the change in an advice letter.² Both the Decision and the Resolution recognize that the utilities are best positioned to determine their own resource needs and to align them with market offerings. Both could easily have prescribed some level or duration of experience, or some specific number of RAM RFOs that a utility would need to issue before it could request program modifications □but neither of them did.

PG&E's Advice Letter 4000-E requests such a modification, based on market information received in its first RAM auction. According to PG&E's Advice Letter 4020-E, filed on March 30, 2012, the evidence received in that auction shows that this modification is necessary to improve the alignment between the volume of bids and the size of each product category in PG&E's RAM portfolio.

AL 4020-E reports that in the first auction, PG&E received 117 conforming offers in total for all three product categories. Of these 117 offers, only four were for baseload, and only three for non-peaking as-available; the remaining 110 offers were for peaking as-available resources. Applying its approved evaluation criteria, PG&E was able to select just one baseload project comprising only 14 MW of the 35 MW allocated for that category, and just one non-peaking as-available project totaling only 9 MW of the 35 MW for that category, leaving 47 MW unfilled in those categories.³ On the other hand, PG&E was able to select 40 MW of peaking as-available projects, which exceeded its 35 MW target but still represented a small fraction of the offers received for that category.

Reallocating its product categories will enable PG&E to tap a far more competitive market to reach its auction target, which will benefit ratepayers. Based on active interconnection filings for 20 MW or less in CAISO and the IOU WDAT processes, total RAM-eligible baseload generation is limited to 240 MW, and RAM baseload demand totals 195 MW across all three IOUs over all four auctions. In other words, the ratio of eligible baseload supply to utility demand is less than 1.25:1, meaning that this is a thin market with relatively weak competition. This lack of competition could force PG&E to contract with less viable projects and pay higher prices if it is required to allocate 35MW of baseload generation per solicitation, and could make it difficult to achieve its RAM target. In contrast, between CAISO and WDAT filings, RAM-eligible peaking as-available solar *exceeds 6 GW*, compared to utility demand of only 688 MW under the utilities' RAM original product allocations, for a ratio of about 9:1 which signals a far more competitive market. Under these conditions PG&E's request to reallocate product categories is justified, because its ratepayers will benefit by increasing the target allocation of peaking as-available resources and procuring from a far more competitive universe of producers.

PG&E has explained that even if its product reallocation request is approved, the utility retains the flexibility to purchase up to 20 MW more than allocated in each category, so it is free to acquire up to 30 MW of baseload (such as geothermal, hydro, landfill gas, biomass, or biogas) or non-peaking as-available resources (such as wind) if it receives competitive offers in those categories.⁴ This is close to the 35 MW allocated for each of these product buckets in the first RAM auction, but with greater assurance that any offers accepted will reflect competitive pricing. To encourage this, Recurrent agrees with the Draft Resolution (p. 5) that the IOUs should encourage participation by soliciting known developers of these projects to attend the Bidders' Conference for its second RAM RFO.

¹ D.10-12-048, Section 12.1, quoted on p. 4 of the Draft Resolution.

² Resolution E-4414 at pp. 11-12, and Finding and Conclusion 10 at p. 40.

³ Also based on market information obtained from PG&E's first RAM solicitation, AL 4020-E proposes to allocate the unsubscribed amounts in the baseload and non-peaking as-available categories from that solicitation, to the peaking as-available category for its second RAM auction. AL 4020-E, at pp. 8-9.

⁴ Draft Resolution, p. 5, and Resolution E-4414, Ordering Paragraph 8 at p. 45.

2. The Commission should not create a unilateral termination right for transmission upgrade costs exceeding study estimates.

The Commission has already rejected proposals from SCE and SDG&E to impose transmission upgrade cost caps on RAM bidders. It did so because it found that the proposed \$/MWh and \$/MW caps were "arbitrary and could unnecessarily limit competition."⁵ Recasting the cost cap as a percentage increase beyond Phase I study estimates provided in the bid, and conferring a unilateral right of termination, would make the cap no less arbitrary and even more likely to limit competition.

The Draft's proposal to effectively cap costs at some percentage increase over study estimates is arbitrary because there is no record to indicate that RAM projects are generating excessive ratepayer-funded upgrade costs; no demonstration of a need specific to RAM projects; and no evidence "required by the RAM Decision" to indicate that this major modification is necessary to improve the RAM program.

The Draft's proposal is even more likely than the previous cost cap proposals to limit competition, because the risk of unilateral contract termination for causes largely beyond the developer's control "after the utility executes it, the Commission approves it, and the developer has expended considerable resources to perform it" would make many projects unfinanceable. Such a termination right is especially untenable for prospective financiers when, as proposed, there is no time limit on exercising the right⁶ and no chance to offer a cure or negotiate a resolution short of contract termination "even where that could benefit utility ratepayers. For all these reasons, the proposed transmission cost cap in the form of a unilateral termination right is likely to have a massive chilling effect on project finance, severely limit the pool of RAM bidders, and cripple the competitive mechanism adopted specifically to protect utility ratepayers.

The Phase I study estimates proposed as the baseline necessarily rest on PTO assumptions (e.g., commodity and labor costs) that can change between study phases, and are far from infallible. Moreover, the CAISO tariff caps developers' interconnection cost responsibility at the cost allocated to them from their Phase I study. At that point projects often choose to drop out rather than post additional funds to continue with the Phase II study. This can reduce the number of network upgrades required for that cluster and the overall Phase II cost estimates. However, if significant upgrades are still required, it can equally result in allocating those costs among fewer projects, increasing the cost to each remaining project. This uncertainty is why Phase I study results come with a margin of error which is at least several multiples of the 10% cap proposed "and which utilities accept when they accept a RAM bid based on the study.

Nonetheless, Recurrent Energy appreciates and shares the Energy Division's continuing interest in protecting ratepayers from excessive network upgrade costs, which we agree could undermine the RAM program if they were to materialize. If evidence emerges at some point that this is actually occurring, we would welcome its presentation by the affected utility in a RAM Program Forum where Commission Staff and the parties could consider cost reduction approaches that serve the interests of ratepayers without jeopardizing RAM project financing or competition among bidders. At a minimum, we believe that such approaches would require the following:

- an evaluation of total ratepayer value that balances any additional upgrade costs with additional benefits that the project and upgrade together confer, rather than a "percent overage" or other static termination trigger;
- a clear definition of the specific information that a utility can consider in re-evaluating contracts already executed and approved to determine whether a project will proximately cause ratepayers to bear excessive transmission upgrade costs;

⁵ Resolution 4414-E, Ordering Paragraph 11 at p. 46, Finding and Conclusion 16 at p. 41, and discussion at p. 17.

⁶ The Draft Resolution (p. 10) seeks "to harmonize treatment of this issue in RAM with other similar programs," citing the approach adopted in Resolution E-4453. That Resolution does modify SCE's SPVP PPA to include a unilateral termination right where transmission upgrade costs to ratepayers increase by more than 10%, but it actually limits the termination right to situations where that increase occurs *from one interconnection study to the next*, and to certain project sizes. (See discussion at p. 27 and Finding and Conclusion 16 at p. 31.)

- a transparent and fair process for independent review and evaluation of the information that the utility considers in any such decision;
- a limited period (e.g., 30 days) after Phase II study results are available and before project financing occurs, during which projects would be re-evaluated and a firm decision made to terminate, resolve the overage, or waive further rights to do so;
- an opportunity for the developer to cure if that is feasible, or to negotiate a solution that serves ratepayers and enables the project to continue;
- a fair and efficient mechanism to challenge any termination decision; and
- an assurance that any contract termination based on excessive transmission upgrade costs to ratepayers will be deemed no fault to the producer, and will result in reimbursement of its bid posting.

Recurrent Energy submits that these would be the minimum standards needed to support project financing should the Commission reconsider its prior Order that IOUs shall not use network upgrade cost caps in RAM. More importantly, however, we reiterate our view that this issue is not properly before the Commission now, because there is no record that RAM projects generate excessive ratepayer-funded upgrade costs; no demonstration of a need specific to RAM projects; and no evidence required by the RAM Decision that this modification is necessary to improve the RAM program.

3. An option to bid either energy-only or FCDS can improve the second RAM auction, but only if early clarifications are provided in IOU Advice Letters.

Recurrent Energy supports in principle the Draft Resolution's direction to modify RAM PPAs to offer producers an option to bid projects as energy-only or fully deliverable capacity, and to consider resource adequacy (RA) benefits. We believe that these modifications, properly implemented, can address some of the Commission's previous concerns about requiring RA from small projects at reasonable cost, and can improve the RAM program's value to ratepayers.

The Draft Resolution (Ordering Paragraph 15, on pp. 13-14) directs the IOUs to revise their bid evaluation formula for including RA value in RAM bids as follows:

bid price + ratepayer funded transmission upgrade costs (network upgrade costs and deliverability upgrade costs) - resource adequacy benefits

Under this formula, RAM bidders considering offering FCDS need to understand how IOUs will determine ratepayer funded transmission upgrade costs. To evaluate deliverability upgrade cost adders, the preferred source of information would be a Phase II deliverability study. However, the Phase II reports for projects studied in Clusters 3 and 4, or in the One-Time FCD Study Option, are not likely to be available until late 2012. While this timing should work well to evaluate RAM 3 and RAM 4 bids, it leaves open the question of what source of deliverability upgrade cost estimate will be used to evaluate RAM 2 bids.

If a project bid into RAM 2 lacks a final Phase II study, we understand that utilities have two primary ways to estimate transmission upgrade costs for solicitation purposes. The first is to consider the results of a Phase I deliverability study. However, Phase I results for the One-Time FCD Study Option and for Cluster 4 do not reflect project-specific impacts, but only a generic application of an average \$/MW upgrade allocation from Cluster 3 Phase I results. Most stakeholders agree that this methodology has produced an inaccurate cost cap that is likely conservative.

The second approach to avoid the shortcomings of relying on Phase I study results for RAM 2, would be for the IOUs to determine transmission upgrade costs using Transmission Ranking Cost Reports (TRCR) used for other RPS solicitations, which we understand can be done independent of CAISO Phase I studies.

From the perspective of developers interested in meeting utility RA needs by offering FCDS, it is critical to understand which of these evaluation methods the IOUs will use. Alternatively, if some other method will be used, developers will need to understand the approach and what evaluation factors it includes in order to formulate responsive offers. It would also be helpful to clarify that the IOUs will consider alternative bids for energy-only or FCDS should developers choose to submit both for a single project. Thus, to make the energy-only/FCDS option effective for RAM, Recurrent Energy recommends that the IOUs:

- (1) specify the source (Phase I studies, TRCR, etc.) of the cost information they will use to evaluate transmission adders;
- (2) clarify that Phase II deliverability studies are required to evaluate RAM 3 bids;
- (3) clarify that a RAM 2 bid submission must be enrolled in a Phase II deliverability study at the time of submission in order to have a deliverability bid considered (similar to RAM 1's requirement that a project have completed a Phase I energy-only study and be enrolled in a Phase II energy-only study to compete);
- (4) clarify that bidders will be able to submit both energy-only and FCDS offers for a single project; and
- (3) include this information in their Advice Letters to be filed within seven days of Resolution E-4489's effective date, in order to effectuate this modification for RAM 2 auctions.

* * *

For all of the reasons presented above, Recurrent Energy urges the Commission to approve PG&E's request to reallocate available capacity for its second RAM auction; not to create a unilateral termination right arbitrarily capping transmission upgrade costs, without compelling evidence that RAM projects actually result in excessive ratepayer costs and no alternative approaches to protect ratepayers and maintain competition are available; and to direct the IOUs to specify and clarify the source of cost information for transmission adders and the scope of the energy-only/FCDS option proposed in the Draft Resolution.

Respectfully submitted,

/s/ John Nimmons
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CC: President Michael Peevey
 Commissioner Mark Ferron
 Commissioner Mike Florio
 Commissioner Catherine Sandoval
 Commissioner Timothy Alan Simon
 Director Edward Randolph, Energy Division
 Chief Administrative Law Judge Karen Clopton
 General Counsel Frank Lindh
 Adam Schultz, JD, Energy Division
 Current Service List for R. 11-05-005

SUBJECT INDEX
RECOMMENDED CHANGES
TO DRAFT RESOLUTION E-4489

~~Recommended deletions~~ are shown with strikeouts.

Recommended insertions are shown in italics and underlined.

Underlined text not in italics was so in the original.

- Page 1:** PROPOSED OUTCOME: . . . Specifically, this Resolution *approves PG&E's request to reallocate available capacity*, modifies Buyer's termination right related to commercial operation deadlines, ~~adds a Buyer termination right to protect ratepayers from excessive increases in estimated transmission upgrade costs~~, and creates an option for Producers to bid as either energy-only or with full capacity deliverability status, *subject to conditions*.
- Page 2:** This Resolution approves with modifications PG&E's advice letter 4000-E and adopts ~~two~~ one additional changes proposed by Commission Staff . . .
- Page 3:** . . . The purpose of this Resolution is to adopt programmatic changes to the Renewable Auction Mechanism based on evidence provided by the IOUs that these modifications are necessary to improve the RAM program before commencement of the second RAM solicitation, currently scheduled for May 31, 2012, *and on proposals made by Energy Division Staff to further harmonize the program with other similar Commission initiatives*.
- Pages 5-6:** ~~While D.10-12-048 and Resolution E-4414 grant PG&E the authority to request a change to its product category allocations based on market conditions. The concerns of those protesting are also valid, that reducing the allocation available to the baseload category would discourage the participation of baseload developers. Accordingly, we encourage all the IOUs to use their flexibility to procure up to 20MW of additional resource from baseload or off-peak as-available projects if their offers are competitive. 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 if the IOUs, which were underrepresented in the first RFO, to maintain the same product category allocations for the second RAM RFO. Additionally, to were to encourage broader participation of these underrepresented parties in the second RAM RFO. To do so, each IOU should specifically solicit the participation of known developers of baseload and off-peak intermittent projects to attend the Bidders' Conference for its second RAM RFO.~~
- ~~PG&E followed the proper protocol by filing this request via Tier 2 advice letter, however, PG&E's request to reduce its RAM allocations for baseload and off-peak intermittent resources. at this time is premature given the lack of industry experience to date with the RAM program.~~
- Accordingly, the Commission approves ~~denies~~ PG&E's request to reallocate its available RAM capacity across product categories. PG&E, SCE, and SDG&E shall also specifically solicit the participation of baseload and off-peak intermittent project developers and their affiliates to attend its Bidders' Conference for its second RAM RFO.
- Page 7:** Delete row 2 of Table 1, and renumber row 3 as row 2.

Pages 10-11: Because of the continuing interest in protecting ratepayers from excessive network upgrade costs, the Commission ~~now revisits~~ *has again considered* the issue of limiting these costs. Specifically, the Commission ~~is concerned~~ *has considered* 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. ~~To protect ratepayers in such a scenario and to harmonize treatment of this issue in RAM with other similar programs, the Commission adopts a provision here similar to the approach recently adopted in Resolution E-4453, modifying SCE's Solar Photovoltaic Program (SPVP) PPA. In that resolution, the Commission adopted SCE's request to amend its PPA to include a unilateral termination right for the buyer in instances where transmission upgrade costs to ratepayers increase by more than 10% beyond the study estimates provided at the time of bid selection by the IOU. We agree that excessive cost exposure for ratepayers would be a legitimate cause for concern. However, to date we are aware of no evidence that executed RAM projects are creating such exposure, so we will not create a termination right at this time. Instead we will rely on the IOUs to document such instances if they arise, and in that event to propose changes to the RAM standard contract that can protect ratepayers without jeopardizing RAM project financing.~~

The Commission found in Resolution E-4453 ~~E-4414~~, and it so finds here, that creating a transmission upgrade cost cap would be arbitrary and would unnecessarily limit competition. We may revisit this issue should convincing evidence emerge that ratepayers are being exposed to excessive upgrade costs, and that modifications are necessary to improve the RAM program. unilateral termination right for the IOU 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 PPA termination if upgrade costs increase less than 10%.

Accordingly, the Commission modifies Resolution E-441as follows:

[Delete Ordering Paragraph 11.]

Page 12: [Insert a new paragraph after the paragraph ending □□ that bids into SPVP with FCDS. □]

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APPENDIX A**RECOMMENDED CHANGES
TO PROPOSED FINDINGS, CONCLUSIONS, AND ORDERING PARAGRAPHS**

~~Recommended deletions~~ are shown with strikeouts.

Recommended insertions are shown in italics and underlined.

Underlined text not in italics was so in the original.

FINDINGS AND CONCLUSIONS

4. Pacific Gas and Electric Company's request to reduce its Renewable Auction Mechanism allocations for baseload and off-peak intermittent ~~at this time is premature~~ are appropriate given ~~the lack of industry its~~ experience to date with the RAM program.
7. Absent convincing evidence that RAM projects are exposing ratepayers to excessive transmission upgrade costs and that modifications are necessary to improve the RAM program, ~~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 is arbitrary and would unnecessarily limit competition. 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%.~~
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, or to bid both as alternatives for a single project; 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 to restrict the utility evaluation of the resource adequacy value to the years that it is actually provided.

ORDERING PARAGRAPHS

2. Pacific Gas and Electric Company's request to reallocate available capacity across product categories for its second Renewable Auction Mechanism RFO is ~~denied~~ approved.

[Insert a new Ordering Paragraph 4 to read as follows, and renumber the remaining paragraphs accordingly:]

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company shall:
 - a) specify the source (Phase I studies, TRCR, etc.) of the cost information they will use to evaluate transmission adders;
 - b) clarify that Phase II deliverability studies are required to evaluate RAM 3 bids;
 - c) clarify that a RAM 2 bid submission must be enrolled in a Phase II deliverability study at the time of submission in order to have a deliverability bid considered; and
 - d) clarify that bidders will be able to submit both energy-only and FCDS offers for a single project.

[Renumbered Ordering Paragraphs are used below:]

45. Within 7 days of the effective date of this resolution, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company shall file a Tier 1 advice letter with the Energy Division demonstrating compliance with Ordering Paragraphs 3 and 4 of this Resolution.

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

- ~~• 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. . . .~~

* * *

VERIFICATION

I am the attorney for Recurrent Energy (Recurrent). Recurrent is not located in the County of Marin, California, where I have my office, so I make this verification on its behalf for that reason. The foregoing:

**Recurrent Energy Comments On Draft Resolution E-4489,
Modifying the Renewable Auction Mechanism**

has been prepared and read by me and its contents are true of my own knowledge and based on information furnished by my client, except as to matters which are therein stated on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 2012, at Mill Valley, California.

/s/ John Nimmons
Counsel for Recurrent Energy

CERTIFICATE OF SERVICE

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

**Recurrent Energy Comments On Draft Resolution E-4489,
Modifying the Renewable Auction Mechanism**

on the addressees and copy recipients listed, and on the parties or their representatives shown on the service list for R.11-05-005.

Dated: April 9, 2012 at Mill Valley, California.

/s/ John Nimmons
Counsel for Recurrent Energy