

April 16, 2012

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

**Re: The Independent Energy Producers Association's Reply to
Comments on Draft Resolution E-4489**

Dear Sir or Madam:

The Independent Energy Producers Association (IEP) submits its reply to comments on Draft Resolution E-4489, as authorized by the e-mail message from the Energy Division's Adam Schultz to the service list of R.11-05-005 on April 10.

IEP replies to two points made in the opening comments on the Draft Resolution submitted on April 9. First, the Draft Resolution proposes to grant the electric utilities participating in the Renewable Auction Mechanism (RAM) program a unilateral right to terminate RAM power purchase agreements (PPAs) if transmission upgrade costs exceed the estimated costs by 10%. Providing buyers a unilateral right to terminate contracts reviewed and approved by the Commission will result in unfinanceable projects and will undermine the RAM program. Second, offering suppliers the option of bidding as either energy-only or full capacity deliverability status is illusory unless bidders are provided with information about the value of Resource Adequacy capacity associated with full capacity deliverability status.

Unilateral termination rights. The Draft Resolution adopts Energy Division's proposal to provide the purchasing electric utilities with a unilateral right to terminate the RAM PPA if the costs of transmission upgrade costs reimbursed by ratepayers exceed 10% of the estimates available when the bid was submitted. IEP appreciates the effort to protect ratepayers from unexpected increases in transmission upgrade costs, but this provision, as proposed, should not be adopted at this time, for the following reasons:

- Potential lenders are extremely unlikely to accept this unmitigated risk of termination, and PPAs with this provision will be unfinanceable, at least from the usual sources of capital. Very few viable renewable generation projects will be able to be developed under this looming risk of termination.

- Some projects will be the least-cost/best-fit option even if upgrade costs are higher than expected. It makes no sense to eliminate good projects because one element of total cost has risen more than expected.
- Project developers have little control over the final costs of upgrades. The utilities do not allow a developer to construct the upgrades,¹ and upgrade projects are largely under the control of the utilities. It is simply unfair to punish a developer with termination for events beyond its control. Once the Commission approves a contract, based on the best information available at the time, project developers must have the confidence to begin construction as soon as possible to meet the short online dates for RAM projects. The threat of unilateral termination, particularly without compensation to the developer for costs it incurred before termination, will cause developers to delay making the resource investments needed to accomplish commercial operation within the short deadlines of the RAM program.
- It is not good policy to give the utilities both the power to terminate the PPA and control over the condition that triggers the termination authority.
- The 10% threshold is arbitrary and could lead to undesirable results, *i.e.*, a project with estimated upgrade costs of \$10,000 could be terminated if the actual costs were \$1,500 more than expected, while a project with estimated costs of \$1 million could experience cost overruns of \$95,000 without the risk of termination.
- The final costs of upgrades may not be determined until the upgrade is completed. It makes no sense to construct upgrades only to terminate the project that was the justification for investing in the upgrade. In short, the Draft Resolution's proposal could lead to stranded costs that will be borne by ratepayers, contrary to the presumed purpose of the proposal.
- At the time bids are submitted, information about the cost of transmission upgrades will usually be preliminary, and not precise. In other words, the upgrade costs will be estimates subject to a large margin of error, and not exact predictions of the ultimate cost. IEP understands that estimates made in Phase 1 of the interconnection study process often vary from the more refined Phase 2 estimates by well over 10%. As long as the bidder provides good faith estimates of transmission upgrade costs, based on the

¹ Comments of Silverado Power, p. 4.

best available information, the PPA should not be subject to termination if this cost element turns out to be higher than estimated.

For these reasons, IEP respectfully urges the Commission to remove this provision from the Draft Resolution. If excessive transmission costs are in fact a significant concern for the RAM program, the Commission should allow for greater participation by the affected developers in crafting a solution to this perceived problem.

The Value of Full Capacity Deliverability Status. The Draft Resolution provides bidders with the option of bidding either as energy-only or full capacity deliverability status (FCDS). FCDS may be required to qualify the project as Resource Adequacy (RA) capacity, which helps the purchasing utility meet its RA obligations and thus provides greater value to the utility than an energy-only bid. But FCDS often requires the project developer to make greater investment in the project starting at the time of its interconnection request. A project developer cannot make a rational decision about whether or not to make the investment to obtain FCDS and provide RA capacity as part of its bid unless it also has information about the additional revenues it may expect to earn by providing RA capacity to the utility. To make the bidder's option something more than pure guesswork, bidders should be provided with information about how RA capacity will be considered in the bid evaluation and the amount of the RA adder. There is no public market information about the price or value of RA capacity, so bidders have no way to make an economic decision about whether or not to make the investments needed to obtain FCDS.

In R.10-05-006, the 2010 long-term procurement plan proceeding, IEP presented detailed testimony about the need for more transparency in bid evaluation. The Draft Resolution's proposal for bidding options provides concrete support for IEP's points.

Conclusion: For all of these reasons, IEP respectfully urges the Commission to (1) delete the proposal to grant utilities a unilateral right to terminate RAM PPAs if the ultimate cost of transmission upgrades exceeds the estimate provide at the time of the bid by 10%, and (2) to make public the RA capacity adder and other information about how FCDS will be valued in the bid evaluation in the RAM auctions.

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Very truly yours,

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