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

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

REPLY COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE APRIL 5th ASSIGNED COMMISSIONER'S RULING AND THE 2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

Linda Agerter
51 Parkside Drive
Berkeley, CA 94705
Phone 510.684.3093
Fax: 510.658.4849
Email: agerterlinda@gmail.com
Attorney for the Large-scale Solar Association

Shannon Eddy, Executive Director
Kristin Burford, Policy Director
Large-scale Solar Association
2501 Portola Way
Sacramento, California 95818
eddyconsulting@gmail.com
kristin.b.burford@gmail.com

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REPLY COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE APRIL 5th ASSIGNED COMMISSIONER'S RULING AND THE 2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

Pursuant to the schedule set forth in Attachment A of the April 5th Ruling of Assigned Commissioner Ferron Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on New Proposals ("ACR"), the Large-scale Solar Association ("LSA") respectfully submits these reply comments on issues to be considered as the California Public Utilities Commission ("Commission") moves forward with its consideration of the 2012 Renewables Portfolio Standard ("RPS") Procurement Plans and the Commission staff proposals included in the ACR.

In these reply comments, LSA expands on the topics discussed in its opening comments and responds to issues raised by other parties in their opening comments. Specifically, these reply comments expand on LSA's opening comments on capturing the benefits of tax credits for ratepayers and offer further comment on how to structure procurement given the uncertainty around the future availability of tax credits. LSA offers general support for placing higher value on interconnection progress in the procurement process and requiring bidders to have a Phase I study before short-listing. LSA responds to party comments on the staff proposals included in the April 5th ACR. In summary, LSA

- Generally supports the staff proposal to standardize variables in the LCBF calculation, but supports the California Wind Energy Association ("CalWEA") comments requesting public disclosure and the Independent Energy Producers Association ("IEP") comments seeking to ensure that the equation appropriate takes costs and benefits into account;
- Raises concerns about the staff proposal to create two shortlists based on the status of transmission studies;
- Opposes the twelve month expiration for shortlists due to concerns that shortlisted projects may not have sufficient time to complete contract negotiations;
- Supports the two-year procurement authorization, so long as investor-owned utilities ("IOUs") are permitted and encouraged to conduct annual solicitations; and
- Opposes the adoption of the staff proposal to minimize transmission costs through the RPS procurement process, as the standards proposed to select bids are vague and subjective.

Finally, LSA responds to party comments on the procurement plans, raising concerns about the Division of Ratepayer Advocates' ("DRA's") recommendation for prescriptive contract success rates and sharing concerns raised by CalWEA and IEP on the curtailment proposals in the procurement plans of Pacific Gas & Electric (“PG&E”) and Southern California Edison (“SCE”).

I. The Commission Should Consider How to Structure Procurement to Best Capture the Tax Credit Benefits for the State.

In its opening comments, LSA urged the Commission to consider the current 2016 expiration date of the Investment Tax Credit (“ITC”) in this RPS planning and procurement cycle.[1] The Commission should ensure that this RPS procurement cycle provides California ratepayers with the maximum benefit of the federal tax credit in the event that it is not extended. LSA notes that IEP[2] also highlighted the risks and uncertainties around the future availability of tax credits in opening comments.

Given the significant risks and uncertainties surrounding the future of the federal tax credits, LSA provides a more detailed proposal for procurement in this cycle to capture the benefits of tax credits for the state. To achieve this goal, the Commission should make a determination that allows and encourages utilities to forward procure a portion of their renewable net short position for the third compliance period before the current 2016 expiration of the ITC. This policy determination should be made in this RPS planning cycle so that utilities will have clear guidance to pursue procurement in

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[1] *Comments of the Large-scale Solar Association on the April 5th Assigned Commissioner’s Ruling and the 2012 Renewables Portfolio Standard Procurement Plans* (June 27, 2012), p. 3-4 (“LSA Comments”).

[2] Specifically, IEP offers an alternative bidding structure (in response to PG&E’s proposed elimination of its Tax Credit Mitigation Option) whereby bidders would provide separate bids based on specific assumptions about the availability of federal tax credits. *Comments of the Independent Energy Producers Association on the RPS Procurement Plans* (June 27, 2012), p. 6-9 (“IEP Comments”).

time to bring new facilities online by December 2016. Specifically, the Commission's decision on the 2012 RPS plans should provide fundamental policy guidance and cost recovery assurance to the utilities seeking to capture these tax credit benefits for their customers.

The IOUs highlight a need for new renewable energy to meet RPS requirements in the third compliance period. Given the current 2016 expiration of the ITC, there exist fundamentally two extreme options for approaching procurement in the third compliance period and a middle ground option for hedging the renewable prices and risks of tax credit expiration. At the extremes, the Commission could:

(1) Require the investor-owned utilities to procure for these needs early, taking advantage of the tax credits and passing those savings onto ratepayers; or

(2) Provide no procurement direction related to forward procurement, allowing ratepayers to bear the price risk associated with tax credit expiration and technology prices.

Both of these extremes have customer risks. The first approach has the risks that technology prices continue to fall at a comparable rate and the tax credit is extended. The second approach entails the risk of significantly higher prices in the third compliance period if tax credits are not renewed and technology prices stabilize and do not continue to decline. LSA recognizes that the Commission's assessment of the likelihood of tax credit extensions and trends in technology prices will be key in evaluating the level of risk ratepayers face and how procurement should account for this risk.

Given these uncertainties, LSA suggests a middle ground approach to hedging the price and market risks. The Commission should direct the IOUs to procure a specified portion of their third compliance period RPS net short quantity in 2012/2013. This forward procurement will allow new facilities to come online in advance of the current 2016 expiration date of the ITC. This approach mitigates the ratepayers' exposure to the expiring tax credit risk while still leaving a portion of the procurement position open to capture future technology price declines and any tax credit extension. In providing this procurement guidance, the Commission should ensure IOUs have both the direction and the flexibility to structure commercial transactions in a manner that maximizes tax advantages for ratepayers, while minimizing costs and risks to ratepayers. Specific Commission policy direction, including assurances of cost recovery, is needed to provide procurement guidance to manage these risks and uncertainties.

II. The Commission Should Focus Additional Effort on Identifying Appropriate Metrics for Project Viability.

To the extent that the Commission establishes a forward procurement preference to capture tax advantages, the 2012/2013 procurement solicitation should focus on high viability projects that are likely to get online by the 2016 expiration.

RPS procurement focused on projects slated to come online in later compliance periods has additional risk consideration that should be considered. As the time between procurement and delivery dates increases, the challenge of evaluating project viability increases since developers will be bidding less mature projects. Many of the metrics used by the Commission to assess project viability have a time component related to the online date. For example, certain permits needed for construction cannot be acquired far in advance of the start of construction, as the permits can expire if construction is not commenced after issuance. Thus, the current project viability metrics are not well-suited to assessing the viability of projects with more distant online dates.

LSA acknowledges this challenge and supports placing additional value on interconnection progress in the procurement process to promote RPS project viability, particularly as the time between procurement and delivery dates increases. LSA recognizes that projects that have moved further through the interconnection process (e.g., projects with a Phase II study or signed Generator Interconnection Agreement) are more mature, have more interconnection cost and timing certainty, and, thus, should be accorded higher value when they are evaluated. That being stated, LSA joins IEP[3] and the CalWEA[4] in supporting PG&E and SCE's requirement that bidders have a completed Phase I study (or equivalent) before short-listing.

LSA further notes that additional stakeholder input on evaluating project viability may be in order, given the changing timeframes between procurement and delivery dates. If the Commission needs additional stakeholder input on these issues, LSA recommends a stakeholder workshop or a focused written comment opportunity seeking additional feedback on this topic.

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[3] IEP Comments, p. 20.

[4] *Comments of the California Wind Energy Association on Assigned Commissioner Ruling Proposals and Draft 2012 Renewables Portfolio Standard Procurement Plans* (June 27, 2012), p. 22 ("CalWEA Comments").

III. Commission Staff Proposals in the Assigned Commissioner's Ruling

a. Proposal 7.1 - Standardized Variables in LCBF Market Valuation

LSA generally supports the staff proposal and the effort to standardize the variables in the least cost, best fit ("LCBF") equation to reflect the net market value of different resources and views this proposal as a significant improvement on the LCBF calculation. LSA agrees with CalWEA's comment that the inputs to the LCBF calculation should be publicly disclosed to the greatest extent possible.[5] In order to ensure the market is given appropriate signals to design technologies and bid projects that meet the desired characteristics, renewable developers need to understand how different characteristics of generating facilities and operations are valued in the procurement process. To that end, LSA reiterates the request it made in opening comments that the Commission prioritize a focused public process to define the applicable inputs, compute a known baseline for the values, and create a transparent methodology to describe how the values will be adjusted for variable resources with differing characteristics and the differing needs of the load-serving entities (based on their differing RPS portfolios).[6]

Although LSA believes that the staff proposal is a significant step forward from the current LCBF formula, LSA also agrees with IEP that further work needs to be done to ensure that the equation fully accounts for the benefits of different renewables and the benefits of network upgrades.[7]

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[5] CalWEA Comments, p. 3.

[6] LSA Comments, p. 6.

[7] IEP notes that the current formula "makes no attempt to recognize and reflect the reductions in greenhouse gas emissions, emissions of air pollutants, risks of fuel - or technology-related outages, and similar benefits of the RPS program that will vary from resource to resource." In addition, the current formula does not recognize the benefits

b. Proposal 7.2 - Preliminary Independent Evaluator Report

LSA has no comment on this proposal at this time.

c. Proposal 7.3 - Use California Independent System Operator Corporation ("CAISO") Transmission Cost Study Estimates in Least Cost Best Fit Evaluations

LSA has no comment on this proposal at this time.

d. Proposal 7.4 - Create Two Shortlists Based on Status of Transmission Study

As noted previously, LSA supports requiring bidders to have Phase I studies before short-listing and supports assigning higher value to projects with Phase II studies and executed Generator Interconnection Agreements during the procurement process. However, LSA is concerned that those projects on the provisional shortlist might not have sufficient time for contract negotiations when/if moved to the primary shortlist (particularly if the staff-proposed shortlist expiration is adopted). As such, LSA supports a single shortlist that focuses on short-listing highly viable projects.

e. Proposal 7.5 - Shortlists Expire After 12 months

LSA opposes this proposal as shortlisted projects might not have sufficient time for contract negotiations. LSA also notes that, the focus should be on high viability

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of network upgrades, providing "no recognition that the upgraded transmission system will be more flexible, resilient, and reliable as a result of the investment in Network Upgrades." IEP Comments, p. 18-19.

projects. LSA notes that delays have, in the past, largely been due to commercial and development challenges. To the extent there is an increased focus on project viability, the age of the shortlist may be resolved or at least become less of an issue.

f. Proposal 7.6 - Two-Year Procurement Authorization

LSA supports the two-year procurement authorization, so long as IOUs can conduct annual solicitations and are encouraged by the Commission to do so. In responding to San Diego Gas & Electric's ("SDG&E's") statement in its procurement plan that it may seek to conduct less frequent solicitations, PG&E's comments[8] note it does not object to SDG&E's less frequent solicitations so long as other IOUs have discretion to hold annual solicitations. LSA generally supports a predictable solicitation schedule and believes IOUs should generally conduct annual solicitations, as appropriate.

g. Proposal 7.7 - Utilize the Commission's RPS Procurement Process to Minimize Transmission Costs

LSA recognizes the complexity of the problem that the Commission staff is seeking to address with this proposal, however LSA agrees with several parties that this proposal is not sufficiently transparent. LSA shares the concerns of SCE[9] that the standards the Commission will use to select the bids are vague and subjective. Any vague and subjective standards would create significant uncertainty in the market and

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[8] *Pacific Gas & Electric Company's (U 39 E) Comments on RPS Plans and New Proposals* (June 27, 2012), p. 4 ("PG&E Comments").

[9] *Southern California Edison Company's (U 338-E) Comments on Assigned Commissioner's April 5, 2012 Ruling Requesting Comments on New Proposals Related to Renewables Portfolio Standard Procurement Plans* (May 23, 2012), p. 10-11 ("SCE Comments").

such uncertainty should be avoided where possible. Thus, LSA opposes the adoption of this proposal.

IV. LSA Responses to Party Comments on Specific 2012 Procurement Plan Issues

a. Success Rates for Projects

LSA is concerned about the recommendations of the Division of Ratepayer Advocates ("DRA") that the Commission approve either a contract success rate of less than 100% for contracts executed but not online or a voluntary margin of over procurement, but not both.[10] LSA recognizes that there could be a potential for double-counting as both the success rate and voluntary margin of over procurement depend on risk of contract failure. However, DRA's suggestion does not appear to leave any room for correction or adjustment if the actual failure rate deviates from DRA's computed average failure rate.[11] LSA notes that the average failure rate computed by DRA includes contract terminations for all three IOUs, thus the individual IOUs' failure rates may differ from this overall average. Further, as evidenced by Figure 1 in DRA's comments, the failure rate, although it has decreased considerably since early years of the program, varies notably from year to year. Given the variations in contract failure rate, LSA suggests that IOUs need some flexibility in assessing the risk inherent in their portfolio of procured RPS resources to remain on track to achieve the 33% RPS goal. Providing

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[10] *The Division of Ratepayer Advocates' Comments on Renewables Portfolio Standard* (June 27, 2012), p. 8 ("DRA Comments").
[11] In its comments, DRA also requests the Commission require that SCE and SDG&E use a higher success rate (DRA suggests ~77%). *See* p. 4, 15.

prescriptive constraints on the contract failure rate IOUs must use and or their ability to seek a voluntary margin of over procurement could hinder their ability to achieve the 33% goal. Given the potential threat to achieving the RPS goal, LSA urges the Commission to avoid placing such severe restrictions on procurement.

b. Curtailment

LSA shares the concerns of CalWEA and IEP on the curtailment proposals in the IOU's procurement plans.

First, LSA supports CalWEA's request[12] that the Commission reject PG&E's proposal to permit unpaid curtailment in response to a warning, forecast, or anticipated overgeneration condition. LSA concurs with CalWEA that curtailment in these situations is appropriately addressed through the economic curtailment provisions in the PPA. If these economic provisions are insufficient to resolve the overgeneration problem and CAISO issues a mandatory curtailment, only then should the non-economic curtailment option be utilized.

In addition, LSA supports the requests of CalWEA[13] and IEP[14] to ensure that SCE's curtailment proposal is consistent with the Commission's previous directives and is reasonable. Specifically, LSA supports CalWEA's request that the Commission direct SCE to modify its proposed curtailment provisions to clarify that SCE "will compensate the seller for all economic curtailment in excess of the curtailment cap even when the

[12] CalWEA Comments, p. 11 -12.
[13] CalWEA Comments, p. 17 -20.
[14] IEP Comments, p. 17.

curtailment is initiated by an entity other than SCE (such as the CAISO).[15] As CalWEA describes in its comments, the curtailment instruction coming from another entity (such as the CAISO) could be a result of the acts or omissions of the IOU and the Commission previously addressed this situation and closed the loophole and ensure that sellers are paid for economic curtailment is initiated by another entity. LSA urges the Commission to re-affirm that determination here. In addition, IEP states that SCE seeks the ability to curtail sellers for any reason, without payment, up to a cap of 50 hours for every megawatt of contract capacity and calculates that this would give SCE the ability to fully curtail a project over 153 MW for the entire year.[16] LSA agrees with IEP that such curtailment authority is unreasonable. LSA supports IEP's request for clarification or correction of this provision to reflect a reasonable limit on the level of unpaid curtailment permitted.

CONCLUSION

LSA appreciates the opportunity to provide these comments and thanks Commission staff for their thoughtful proposals on reforming the RPS procurement process. For the reasons stated herein, LSA encourages the Commission to provide policy direction to ensure that RPS procurement in this cycle captures the benefits of tax credits for ratepayers. LSA generally supports the Commission staff proposals 7.1 (standardizing LCBF variables) and 7.6 (two-year procurement authorization). In

[15] CalWEA Comments, p. 20.
[16] IEP Comments, p. 17.

addition, LSA urges the Commission to address the concerns of CalWEA and IEP with respect to the curtailment proposals included in the procurement plans of PG&E and SCE.

Dated: July 18, 2012

Respectfully Submitted,

/s/Kristin Burford

Kristin Burford
Policy Director
Large-scale Solar Association
2501 Portola Way
Sacramento, California 95818

VERIFICATION

I, Kristin Burford, am the Policy Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare that the statements in the foregoing copy of *Reply Comments of the Large-scale Solar Association on the April 5th Assigned Commissioner's Ruling and the 2012 Renewables Portfolio Standard Procurement Plans* are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 18, 2012 at San Francisco, California.

/s/ Kristin Burford
Kristin Burford
Policy Director, Large-scale Solar Association