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 UTILITY REFORM NETWORK ON NEW PROPOSALS RELATED TO RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

Matthew Freedman
Staff Attorney

The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: 415-929-8876 x304
Fax: 415-929-1132
E-mail: matthew@turn.org

July 18, 2012

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON NEW PROPOSALS RELATED TO RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

Pursuant to the April 5, 2012 Assigned Commissioner's Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans pursuant to Public Utilities Code §399.11 et seq. and Requesting Comments on New Proposals (ACR), The Utility Reform Network (TURN) respectfully submits these reply comments on the Renewables Portfolio Standard (RPS) plans of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

I. IOU PREFERENCES FOR CATEGORY 1 PRODUCTS AND PROJECTS WITHIN THEIR SERVICE TERRITORY OR THE CAISO BALANCING AREA ARE NOT IN CONFLICT WITH SBX2

In opening comments, DRA expresses concern with the proposals of PG&E, SCE and SDG&E to give preference to renewable generation projects located within their own service territory or (in the case of SCE) the CAISO Balancing Authority and asserts that "these preferences are contrary to the provisions of the statute that define the first portfolio category."[1] DRA further argues that SCE's proposal to procure exclusively category 1 is "inconsistent with the requirements of the RPS program".[2] TURN disagrees with DRA's assessment of SBx2 (Simitian) and urges the Commission to approve the specific proposals made by SCE, SDG&E and PG&E relating to project location and product category type.

DRA is simply wrong in asserting that such proposals are contrary to law or even frustrate the intent of the Legislature. In enacting SBx2, the Legislature defined three

[1] DRA opening comments, page 5.
[2] DRA opening comments, page 6.

SB_GT&S_0716995

distinct product categories for the purposes of establishing specific procurement requirements through 2020. The only binding requirements relate to the procurement of a minimum quantity of product category 1 resources (§399.16(b)(1)) in each of the three compliance periods and maximum quantities of category 2 and 3 resources. The law does not require a retail seller to either procure a non-zero amount of category 2 and 3 resources. Furthermore, the category 1 definition does not limit the ability of a retail seller to use more restrictive geographical limitations when soliciting projects.[3]

Attempts to read this additional obligation into the law should be rejected. While a retail seller may rely on the product category proportions outlined in §399.16, there is no basis for concluding that a retail seller may not go beyond these minimum requirements at its own discretion. In effect, DRA suggests that a retail seller could be found out of compliance if it fails to procure the maximum quantities of category 2 and 3 products allowable by statute.[4] This interpretation turns the statute on its head by converting a maximum allowable quantity (for category 2 and 3 products) into de facto minimum procurement obligations. There is no basis for this conclusion. Moreover, there is nothing in the recent Commission decision implementing this portion of SBx2 (D.11-12-052) that supports this extreme reading of the code.

As a matter of policy, TURN believes that it is reasonable for the IOUs to primarily solicit resources that provide the greatest ratepayer value and to focus on projects within their service territory or the CAISO balancing area authority. There are many benefits of local renewable generation that are not reflected in the PPA price or the least-cost/best-fit rankings. Moreover, recent solicitations have demonstrated

---

[3] Under DRA's approach, the limitations on RAM project eligibility would be in conflict with SBx2.
[4] DRA opening comments, page 6 ("Section 399.16(c) of the Public Utilities Code establishes minimum requirements for procurement in Category 1, and maximum requirements for products in Categories 2 and 3, but does not eliminate the requirement that portfolios should be balanced, containing products from all three categories.")

SB_GT&S_0716996

extremely abundant supply and attractive pricing for more local generation. Therefore, TURN does not see any material ratepayer harms from the approaches outlined by these IOUs.

II. INTERMTTENT RESOURCE INTEGRATION COST ADDERS

Several parties express concerns about the application of integration cost adders to intermittent resource bid as proposed by PG&E, SCE and SDG&E. DRA agrees that integration costs are non-zero but urges the Commission to "initiate a stakeholder process to arrive at a reasonable integration cost adder or calculation methodology that can be utilized by all three IOUs in their RPS least-cost, best fit bid evaluations."[5] Solar Reserve, LSA and IEP also express concerns about the use of such adders absent additional analysis to justify any specific adders.[6]

TURN shares these concerns and urges the Commission not to approve any integration cost adders unless they satisfy two key criteria. First, the adders must be the product of a Commission-supervised process that involves stakeholder input and can be litigated. Second, the adders should be uniform across the three IOUs.[7] TURN's approach is consistent with past Commission precedents and should not be abandoned at this juncture.[8] None of the utility proposals satisfy these two criteria because they either rely on inappropriate (outdated) values or allow each IOU to unilaterally develop its own adder without any public review or need for consistency.

[5] DRA opening comments, page 12.
[6] Solar Reserve opening comments, pages 8-9; LSA opening comments, page 6; IEP opening comments, page 9.
[7] TURN could support the use of a uniform methodology rather than a uniform adder (in $/MWh).
[8] D.11-04-030, page 23; D.03-06-071, pages 33-34.

SB_GT&S_0716997

The Commission is currently supervising the CAISO integration modeling studies in R.12-03-014. These studies, once modified to incorporate legitimate stakeholder concerns, should provide the basis for the development of any integration cost adder. Rather than relying on an $8.50/MWh figure (proposed by PG&E) developed in 2006 for the purpose of modeling Greenhouse Gas impacts, the Commission should instead ensure that adders are based on recent data being relied upon for the development of other key resource planning policies.

TURN urges the Commission to either designate a phase of R.12-03-014 for this purpose or wait until the CAISO integration modeling has been approved and then conduct a phase of this proceeding that utilizes the approved modeling methodology and inputs. Approving the proposals of PG&E, SCE and SDG&E would lead to inconsistent approaches, exclude most key stakeholders and encourage the use of arbitrary and unsupported adders.

III. PG&E'S PROPOSALS TO ELIMINATE THE TAX CREDIT MITIGATION OPTION AND SOLICIT RESOURCES WITH ONLINE DATES AFTER 2016 SHOULD BE REJECTED

In opening comments, IEP and DRA both address PG&E's proposal to eliminate the Tax Credit Mitigation Option (TCMO) and to solicit projects with online dates after 2016. IEP expresses concern that the elimination of the TCMO will undermine project development and lead to inefficient outcomes for both developers and ratepayers.[9] In contrast, DRA supports eliminating the TCMO on the grounds that the change "would require projects to be financially more self-sufficient and less reliant on subsidies".[10] TURN agrees with IEP and disagrees with DRA and PG&E.

[9] IEP opening comments, pages 7-9.
[10] DRA opening comments, pages 14-15.

SB_GT&S_0716998

The TCMO allows a counterparty to renegotiate the PPA price in the event that federal tax credits are not available when the project becomes commercially operational. Since the current Investment Tax Credit (ITC) is due to expire at the end of 2016, any solar or geothermal project with a post-2016 online date would be faced with two choices under PG&E's proposal – either submit a price that assumes ITC extension or one that assumes no ITC availability. If the project submits a lower price (assuming post-2016 ITC) and the tax credits are not extended, the project will be unfinanceable and the project developer will be forced to default (assuming no price reopener). If the project submits an "unsubsidized" price (assuming no post-2016 ITC) and the tax credits are subsequently extended, the entire benefit of the tax credits would accrue to the project developer and its investors.

DRA operates under the false assumption that removing the TCMO will either force developers to stop relying on federal subsidies or force developers to internalize the loss of expected credits. This assumption is not realistic. Developers will utilize every available federal and state tax credit regardless of whether their PPA contains this condition and will not develop projects that are money losers. The only relevant question is whether these credits will be used to reduce the PPA price paid by ratepayers or whether the financial benefits will be channeled exclusively to project investors.

By combining the TCMO removal with the proposal to give preference to resources with post-2016 online dates, PG&E's plan would significantly increase the risk of contract failure and potentially deny ratepayers their share of huge amounts of federal tax credits. If PG&E contracts with a solar project promising a 2018 online date, any developer assuming ITC availability will default on the PPA if the ITC is not extended beyond 2016 (and will delay developing projects until the fate of the ITC becomes clear). By contrast, developers assuming no ITC will find themselves

SB_GT&S_0716999

unjustly enriched if the ITC is extended and PG&E ratepayers will be denied the benefits of this credit.

TURN urges the Commission to accept the commercial realities that (a) developers will not finance or construct a money-losing project and (b) developers will always utilize all available tax credits. There is no practical method of forcing a developer to accept the loss of the ITC when its entire financing model relies on this very sizable credit. The approach supported by PG&E and DRA practically guarantees a wave of project defaults if the ITC is not extended. And no developer will voluntarily lower its pricing if unexpected tax credits subsequently become available.

The Commission should take two steps to address this problem. First, PG&E should be strongly encouraged to contract for resources with online dates prior to the expected ITC sunset (currently December 31, 2016) and any Production Tax Credit sunset (currently December 31, 2012).[11] This approach reduces the risk that projects will be exposed to ITC or PTC risk and thereby maximizes the benefits of these credits for ratepayers. Second, PG&E should not be allowed to remove the TCMO from its standard PPA. Removing the TCMO will force developers to make unrealistic assumptions (and thereby increases defaults) or could cause the ITC/PTC to be effectively squandered by denying ratepayers the financial benefits.

If PG&E does not take these steps in the near-term, the Commission should hold PG&E accountable for excessive project defaults and/or unreasonably high project pricing that results from this strategy. If PG&E's approach jeopardizes compliance or proves detrimental to the interests of ratepayers, the Commission should place the blame squarely on PG&E.

---

[11] TURN does not have any problem with PG&E contracting to procure from a facility post-2016 if it anticipates achieving initial commercial operations prior to the ITC sunset. In other words, PG&E could contract for years 5-25 of a facility's output if the developer can find another buyer to take the first 5 years of generation.

SB_GT&S_0717000

Respectfully submitted,

__________/S/___________

MATTHEW FREEDMAN
Attorney for
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: 415-929-8876 x304
Fax: 415-929-1132
E-mail: matthew@turn.org

Dated: July 18, 2012

SB_GT&S_0717001

VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

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

Executed on July 18, 2012, at San Francisco, California.

________/S/___________

Matthew Freedman
Staff Attorney