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Edward Randolph, Director
Energy Division
California Public Utilities Commission
505 Van Ness Avenue, Room 4004
San Francisco, CA 94102

Re: Pacific Gas and Electric Company Advice 4100-E; Request for Modification of PG&E's Renewable Auction Mechanism Program Pursuant to Decision 10-12-048

Dear Mr. Randolph:

By way of this letter, the Solar Energy Industries Association (SEIA)[1] responds to the above referenced advice letter filing of Pacific Gas and Electric Company (PG&E) seeking modifications to the implementation of, and associated power purchase agreement (PPA) for, its Renewable Auction Mechanism (RAM) procurement program. SEIA (and its predecessor organization) has been an active participant in the shaping of the RAM program and welcomes the opportunity to continue to work with all interested stakeholders to make refinements to the process which will serve to garner significant participation by commercially viable and cost effective projects. In this vein, SEIA offers the following comments on certain of the suggested modifications to PG&E's RAM program and the associated power purchase agreement.

Guaranteed Commercial On-Line Date

PG&E proposes to extend the Guaranteed Commercial On-line Date for program projects to a date no later than 36 months subsequent to the Effective Date. This adds an additional 12 months to the current required on-line date. PG&E states that such is necessary to allow developers sufficient time to clear all regulatory, permitting, and interconnection hurdles. SEIA objects to PG&E's proposal and submits that it should be rejected as contrary to the intent of the RAM program.

In approving the RAM, the Commission, in discussing the required on-line date stated:

"We think there is merit in a strict length of time provision for RAM, not unlike in

[1] The comments contained in this response represent the position of the Solar Energy Industries Association as an organization, but not necessarily the views of any particular member.

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the Existing FIT. This streamlines RAM administration and attracts projects that are more viable because they are further along in the project development process. We find that the best approach is to set meaningful time limits, subject to one justifiable extension. Therefore, we adopt an 18-month timeframe, with the potential for one six-month extension." [2]

Just a few months ago, responding to an earlier PG&E request, the Commission extended its original 18-months-from-contract-execution timeframe to 24 months from Commission approval.[3] With the allowed six month extension for permitting, interconnection and *force majeure* issues, a RAM project has two and a half years to come on line. Extending that time period to three and half years as PG&E proposes would merely open the door for projects which have minimal chance of success to execute RAM contracts and tie up program MW. PG&E's Proposal to extend the Guaranteed Commercial On-Line Date must be rejected

Obligations of Energy-Only Sellers

In Resolution E-4414 (August 2011), the Commission rejected proposals in the IOUs' RAM implementation advice letters to require that sellers obtain Full Capacity Deliverability Status (FCDS) in order to execute RAM contracts. Specifically, the Commission ordered that the IOUs "shall not require sellers to achieve full capacity deliverability status unless the seller can obtain full capacity deliverability *with no additional costs to the seller*." [4]

SCE had earlier proposed a similar requirement for its Solar PV Program.[5] In Resolution E-4453 the Commission likewise rejected that proposal, instead ordering that sellers should have the option to bid their projects as energy-only or with FCDS.[6] In reaching that conclusion, the Commission recognized that "projects that can deliver resource adequacy provide more value to ratepayers and should be recognized for that value," and so directed SCE to rank SPVP bids using a formula that explicitly values resource adequacy benefits.[7]

In Resolution E-4489, the Commission revisited this issue in the RAM context, and applied its findings, conclusions and order in the SPVP proceeding to RAM auctions as well. In doing

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2 Decision 10-12-048 at pp. 51-52.

3 Resolution E-4489, pp. 9-11; Finding and Conclusion 7, at p. 18; and Ordering Paragraph 5, at p.19.

4 Resolution E-4414, issued August 22, 2011; p. 16, Finding and Conclusion 18, and OP 13 (emphasis added).

5 SCE Advice Letter 2571-E, April 5, 2011; e.g., SPVP 2011 RFO, Appendix A-1, SPVP PPA, §7.1, and Appendix A-2, SPVP PPA, §2.03(b)(3)

6 Resolution E-4453, issued February 21, 2012, p. 23, Finding and Conclusion 13, and Ordering Paragraph (OP) 4.

7 *Id.*, p. 23, which establishes the formula as "bid price + transmission upgrade costs (network upgrade costs and deliverability upgrade costs) – resource adequacy benefits." OP 4 (p. 34) restates this as "bid price plus a transmission study cost adder, less the value of that project providing resource adequacy benefits."

so, it reiterated its earlier finding that "projects that economically provide resource adequacy provide a greater value to ratepayers and thus should be recognized for that value in the bid evaluation process," and concluded that "it would improve RAM to permit the IOUs to consider the benefits of a project providing resource adequacy when it evaluates bids from a RAM auction." [8]

Now, in contravention of the Commission's Order in Resolution E-4414, PG&E proposes that energy-only sellers be required to incur additional costs of up to $50,000 to pursue annual deliverability studies so that PG&E customers can benefit if the utility acquires RA at a low cost and without additional network upgrades.[9] Beyond imposing a financial burden (especially on smaller projects) that the Commission has previously rejected, PG&E actually proposes *not to recognize or compensate RA value* for sellers who initially bid as energy-only but are later able – through their own expenditures for annual deliverability studies – to obtain a finding of full deliverability. Its proposed RFO instructions explicitly state that:

> "[f]or a project that bids as energy-only, but later gets a finding of full deliverability via the annual assessment, *there will be no adjustment to the TOD factors* because changing the TOD factors and resulting payments under the PPA would alter the basis on which the Participants' Offer was selected."[10]

PG&E's RAM proposal recognizes RA value only through time-of-day adjustment factors that differ between energy-only and FCDS contracts. Thus, PG&E's proposed RFO instructions and corresponding PPA language would require energy-only sellers to pay up to $50,000 for annual deliverability studies intended to benefit PG&E and its customers, but would not compensate those sellers if the studies they fund result in full deliverability, and their projects in fact confer RA value on PG&E and its customers.

This is not only unreasonable on its face, but it ignores the Commission's express findings in the two previous resolutions cited above that "projects that can deliver resource adequacy provide more value to ratepayers *and should be recognized for that value*." It also disregards the Commission's clear direction to the IOUs to value RAM projects using a formula that expressly credits sellers with the value of any RA benefits.

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8 Resolution E-4489, issued April 19, 2012; pp. 12-13, Findings and Conclusions 9 and 11, and OP 5, adopting the same formula established in Resolution E-4453 for SCE's SPVP for all three IOUs.

9 PG&E Advice Letter 4100-E, p. 2.

10 AL 4100, Attachment A, *PG&E Proposed RAM Protocol and Appendices, including RAM PPA as Appendix B to the Protocol.* Proposed RAM RFO protocol to be issued November 1, 2012, Section V-B., *Deliverability*, at p. 9, emphasis added (pdf at p. 22); and Appendix B, proposed RAM PPA, §4.4(c) at p. 53 (pdf at p. 89). We also note that PG&E's concern over "altering the basis on which the Participants' Offer was selected" is misplaced here. Any such "alteration" simply increases the value of a PPA already awarded through a competitive bidding process to properly reflect new study results or changed circumstances: it does not disadvantage other bidders whose offers were less favorable from the start.

Accordingly, SEIA recommends that the Commission (1) reject PG&E's deliverability study proposal as submitted; (2) afford energy-only bidders the *option* to pursue periodic deliverability studies; and (3) in cases where such studies find full deliverability, direct the IOUs to recognize the RA value conferred and modify the PPA to compensate sellers for providing it in the same way they would be compensated if they had initially bid with FCDS, adjusted for the time when it will actually be provided.

Changes to Letter of Credit Criteria

PG&E seeks to modify the letter of credit requirements in its RAM PPA to reflect evolving financial market conditions. SEIA recognizes PG&E's concerns and has no objection in principle to the kinds of changes requested. However, SEIA is concerned that some of the PPA language proposed is both confusing and overbroad, and would make it difficult or impossible for sellers to understand what is required of them, or to rationally plan their projects.

In particular, SEIA is concerned with the PPA language that PG&E proposes to limit the amount of credit posted in a letter of credit by any single issuer, and with the provision that would enable PG&E to impose additional but unspecified conditions in a letter of credit issued by a foreign bank.[11] With respect to the former, PG&E proposes the following PPA language:

> 1.151 'Maximum Issuing Amount' means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars ($25,000,000.00), without Buyer's prior written consent. [12]

The stated requirement is ambiguous. The phrase "60% of the total collateral posted by Seller in the form of Letter of Credit" is subject to differing interpretations. For example, it could mean 60% of the total collateral posted by a seller on the project that is the subject of the PPA, or it might mean 60% of the total collateral posted by the seller on all of its projects with this issuing bank, or on all of its projects with any issuing bank.

This same ambiguity is also present in PPA §1.147, defining "Letter of Credit," which states in part that:

> [T]the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars ($10,000,000.00) on the date of Transfer.[13]

Taken together, the two quoted provisions seem to mean that the "maximum issuing amount"

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11 AL 4100-E, p. 2. Identified as modifications (2) and (3) under paragraph "B. Letter of Credit".

12 *Id.*, Appendix B, *RAM PROGRAM: Form of Power Purchase Agreement*, p. 23 (pdf p.59).

13 *Id.,* §1.147 defining "Letter of Credit", p. 22 (pdf p. 58).

applies only when the total amount of collateral posted by the Seller – on one project or many, or with one or more issuers is not clear – exceeds $10 million. However, if that understanding is not correct, and because the "maximum issuing amount" is the *lesser* of 60% of some number or $25 million, imposing the maximum could result in limiting a single issuer's letter of credit and forcing the seller to deal with several issuers. This would increase transaction costs even for very small projects whose failure would pose negligible risk to PG&E, especially relative to much larger projects that might nevertheless satisfy the 60% requirement.

In short, these proposed modifications to the PPA's letter of credit requirements are at best confusing, and at worst could unnecessarily increase transaction costs for smaller projects without significantly reducing risks for PG&E. Again, SEIA does not oppose PG&E's effort to address changing financial markets and diversify its risk, but believes that the proposed PPA language introduces intolerable ambiguity, and would be unworkable even for highly creditworthy sellers and issuers.

Apart from concerns over the meaning and application of provisions limiting the amount of credit backed by any single issuer, PG&E's "Letter of Credit" definition would enable the utility to impose additional, but unspecified, conditions on letters of credit issued by foreign banks, as follows:

> 1.147 'Letter of Credit' means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; *provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form*; ...[14]

This open-ended provision gives no indication of the criteria PG&E would use to assess whether modification to the pro forma letter of credit would be required, or what types of modifications could be made. At this point, neither sellers nor the Commission have enough information to assess whether changes that PG&E might require would be reasonable, or to address their merits. The purpose of standard PPA terms, vetted by the Commission and stakeholders in advance, is to enhance predictability and certainty for all RAM participants. PG&E's open-ended proviso would not accomplish that, but would compound the uncertainties already discussed.

Accordingly, SEIA recommends that Commission staff solicit from PG&E additional information defining the circumstances in which PG&E would modify its letter of credit form for a foreign bank, and the changes it would apply in such cases. SEIA and its members would also be pleased to work with PG&E to craft clear and workable letter of credit requirements for its RAM PPA.

Consistency With PG&E's Draft 2012 RPS Form PPA

In sections G (Curtailment) and H (Consistency with 2012 RPS Form PPA) of its Advice Letter, PG&E is proposing a number of additional changes which it states are for the purpose of

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[14] *Id.* (emphasis added).

"better align[ing] its RAM PPA with its draft 2012 RPS Form PPA."[15] Given the basis for the proposed changes, SEIA submits that the Commission should defer their consideration with respect to PG&E's RAM PPA until their merits have been decided as part of the 2012 RPS Procurement Plan process, where PG&E indicates that they are already under consideration.[16] This will advance the interest of all parties and the Commission in efficiently addressing these issues and achieving consistency among the multiple procurement programs serving California's renewable resource goals, and should benefit PG&E as well as other program participants.

Very truly yours,

Jeanne B. Armstrong

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Service List for R.11-05-005

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15 AL 4100-E, pp. 4-6.

16 While SEIA believes that it is premature to consider matters presented in PG&E's draft 2012 RPS form PPA in this forum, we are especially concerned with the breadth and implications of PG&E's proposed changes to its curtailment provisions, where "any warning, forecast or anticipated over-generation" would be considered an additional CAISO-directed curtailment qualifying under the PPA's existing Curtailment Order definition. As described by PG&E, this could result in curtailments based on economic forecasts rather than on genuine threats to the integrity of the grid or system emergencies, a completely untenable situation for project financing which we trust will be thoroughly vetted in the RPS Procurement Plan forum.