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 SOLAR ENERGY INDUSTRIES ASSOCIATION ON THE THIRD REVISED PROPOSED STANDARD FORM CONTRACT AND THE PROPOSED DRAFT TARIFFS FOR THE SECTION 399.20 FEED-IN TARIFF PROGRAM

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: jarmstrong@goodinmacbride.com

Attorneys for the Solar Energy Industries Association

September 11, 2012

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 SOLAR ENERGY INDUSTRIES ASSOCIATION ON THE THIRD REVISED PROPOSED STANDARD FORM CONTRACT AND THE PROPOSED DRAFT TARIFFS FOR THE SECTION 399.20 FEED-IN TARIFF PROGRAM

In accord with the August 23, 2012, E-mail Ruling of Presiding Administrative Law Judge DeAngelis, the Solar Energy Industries Association (SEIA)[1] replies to comments filed in the above captioned proceeding on August 15, 2012, regarding the Third Revised Proposed Standard form Contract for the Section 399.20 Feed-In Tariff program (Joint PPA) submitted jointly by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) (collectively the IOUs) and the associated proposed draft tariffs submitted individually by each IOU.

I. INTRODUCTION

In reviewing the other parties comments on the Joint PPA and associated tariffs, SEIA was mindful of the overarching intent of a Feed-in-Tariff program -- to provide "a simple and streamlined mechanism for certain generators to sell electricity to the utility without complex negotiations and delays."[2] Eligible generators for the program are smaller in size but, more often than not, located close to load. In order to ensure that such generators can come on line, the

---

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

[2] *See* Decision 07-07-027 at p. 1.

Commission has recognized the need to make modifications to contract terms, which were crafted for larger sized projects, to accommodate smaller sized projects. It is with these concepts in mind, that SEIA offers the following reply comments.

II. POWER PURCHASE AGREEMENT PROVISIONS

A. Guaranteed Commercial Operation Date

The Joint PPA requires that the Commercial Operation Date of the facility be no later than 24 months from the contract execution date, allowing for an additional 6 months for "Permitted Extensions." Placer County (comments at p. 2) argues that the 6 month extension period should be extended to 12 months. SEIA disagrees. A project that meets the Eligibility Criteria to receive a PPA under the Re-MAT Program (as set forth in the IOUs respective Re-MAT draft tariffs) should have sufficient experience and be sufficiently along in the development process to reach commercial operation within two years of contract execution (with one allowable extension period).

SEIA notes, however, that there should be one caveat to this required time line. If, as pointed out by Henwood Associates (comments at pp. 7-8), a Transmission Delay is due to the time required by the IOU's distribution group to engineer or construct the interconnection, then the allowed extension should be commensurate with the period of delay induced by the IOU.

B. Credit and Collateral Requirements

Section 13 of the Joint PPA requires that the Seller post collateral in an amount ranging from $20 to $50 per kw (depending on the size of the project) and maintain that collateral throughout the term of the agreement. Clean Coalition (comments at p.9) objects to the requirement that the Seller must maintain the collateral throughout contract term. In this regard, Clean Coalition notes that such deposits may serve a purpose during the development period prior to the project coming on line, but once the project is on line, the Seller is heavily

incentivized through power payments to keep the project online and in optimal working order. Thus Clean Coalition has proposed that once the commercial operations date is met, the collateral should be returned to the seller. SEIA supports Clean Coalition's position.

The projects which will participate in the SB 32 program are small. Having capital tied up in a collateral requirement for an extended period of time could result in a significant financial strain on the Seller. Once the project comes on line, the Seller is incentivized to keep the project going and the Buyer (*i.e.*, IOU) is protected through other contract provisions (*e.g.*, Section 12.3, damages for failure to meet guaranteed energy production)

C. Events of Default and Termination

Section 14. 2 of the Joint PPA lists a number of "Events of Default." Once such an event occurs, then the non-defaulting party has the right to terminate the contract. In its comments, the Clean Coalition (comments at p. 9) identifies two Events of Default as being inappropriate and which should be removed from the contract-- Bankruptcy (Section 14.2.1.1) and Sellers Modification of its Facility (Section 14.2.2.8). SEIA agrees. A Seller declaring bankruptcy does not automatically equate to the inability to carry out contract obligations. Similarly, modification of a Seller's facility should not result in contract termination unless that modification renders the Seller unable to fulfill its contractual obligations.[3]

---

[3] Similarly, Placer County comments that Section of the PPA which provides that "During the Delivery Term, Seller shall not modify, alter or repower the Facility without the written consent of Buyer" should be deleted. As noted by Placer County (comments at p.4), "The issue of modifications to the facilities is not an area in which the IOUs need to be involved, since there are other provisions of the contract that properly ensure that the seller will meet the essential requirements of the agreement.

D. Forecasting

Appendix D to the Joint PPA contains three different sets of forecasting requirements -- one for each IOU. The Joint PPA provides that the Seller shall take on the responsibility of forecasting. The Clean Coalition (comments at p. 4 and p. 10) recommends that all forecasting should be the Buyer's responsibility. The Clean Coalition notes the dramatic increase in efficiency if the Buyer handles all forecasting for its project portfolio rather than each Seller attempting to do so individually. SEIA agrees with the Clean Coalition. While the Seller should have the obligation to provide all necessary data to the IOU, the IOU is better equipped to perform the forecasting function. SEIA also agrees that the Seller should pay a reasonable fee to the IOU for the performance of such service.

E. Telemetry

Appendix F of the Joint PPA, as it pertains to PG&E and SCE, requires that the Seller install a Telemetering System at the facility. Based on the input of parties to this proceeding, the IOUs placed a cost cap of $20,000 on the purchase and installation of such a system. The Joint PPA, however, makes very clear that such cost cap does not include the ongoing operational expenses of such system.[4] In response, the Clean Coalition (comments at p. 11) contends that the Seller should not be required to pay monthly operating expenses in excess of $100.00. SEIA agrees that a cap on monthly operating expenses should be established. The Joint PPA provides PG&E and SCE a great deal of discretion over the type of telemetering equipment the Seller may install. Certain technologies have higher operating costs than others. The Seller should not be exposed to additional costs due to a decision placed solely in the Buyer's hands. There should be a cap placed on such exposure.

---

[4] See definition of "Aggregated Telemetering System Installation Costs."

F. Contract Amendments

Section 20.3 of the Joint PPA provides, in applicable part, that, "the CPUC has reviewed and approved this Agreement. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both Parties." Commenter Reid (comments at p.7) objects to this provision, arguing that such "language defeats the purpose of a standard contract; and transfers regulatory authority from the Commission to the parties." Reid argues that since the Commission is approving the standard PPA, it must approve all changes. Reid misses the point -- the standard PPA is for the purpose of leveling the playing field between the IOU and the developer. The IOU must offer the PPA in the form approved by the Commission. If, however, in the course of executing one contract with a particular developer, *both* the developer and the IOU agree to a certain change then such should be allowed absent Commission authorization.

IV. TARIFF REQUIREMENTS

A. Project Viability

The Re-MAT Decision adopts as one of the required project viability criteria that the Seller "attest that: one member of the development team has (a) completed at least one project of similar technology and capacity or (b) begun construction of at least one other similar project."[5] PG&E has interpreted this viability criterion as requiring that the project of "similar capacity" be no more than 1 megawatt (MW) smaller than the capacity of the Project at hand. For example, for a 3 MW Project, a project of similar capacity cannot be smaller than 2 MW. SEIA agrees with the Commenter Reid (comments at pp. 8-9) that PG&E's interpretation of this viability requirement should be rejected. The required project size in the Re-MAT program is narrowly

[5] Decision 11-05-035 at pp. 69-70 .

defined (up to 3 MW). If a developer has completed another project within that size range then he should meet this viability criterion for the Re-MAT program

B. Interconnection Process

In Decision 12-05-035, the Commission stated that, "*until* the Commission makes a final determination in R.11-09-011, utilities shall allow generators to *choose* which interconnection processes to use, either the process set forth in the Rule 21 Tariff or the WDAT."[6] As pointed out by the Interstate Renewable Energy Council (IREC) (comments at p.4), neither SCE's nor SDG&E's proposed tariffs are in full compliance with this directive and thus require modification. SEIA strongly supports IREC on this account.

Specifically, SCE's tariff provides that "Applicants not yet deemed eligible as of the date of any such CPUC determination will no longer be permitted to interconnect pursuant to SCE's WDAT and must interconnect pursuant to SCE's Rule 21." Comparably, SDG&E's tariff provides that "Projects can choose between SDG&E's Rule 21 or SDG&E's Wholesale Distribution Access Tariff ("WDAT") and must follow these procedures until the Commission makes a final determination in Rulemaking (R.) 11-09-011 revising SDG&E's Rule 21, after which the project must interconnect through SDG&E's revised Rule 21." As drafted, both SCE's and SDG&E' proposed tariffs would require that applicants already proceeding under the WDAT interconnection rules be forced to withdraw their application and resubmit it under the new Rule 21 tariff -- a result which is not only wasteful but in contradiction of the Decision which provides for a choice up until the time the Commission makes a final determination in R. 11-0-9-011. There is nothing in the Decision which indicates that a choice made could be "reversed" by the IOU once a final Commission determination is made.

---

[6] Id. at p.98.

Moreover, it should be kept in mind that the project viability criteria for the Re-MAT tariff require that developers have already made significant progress through the interconnection process before obtaining a PPA under Re-MAT. A generator which chooses the WDAT process and commences going through the steps thereunder should not then be disadvantaged by having to start the interconnection process over again should the Commission reach a final determination in R. 11-09-011 prior to the generator completing the WDAT process.

IV. CONCLUSION

SEIA respectfully requests that the Commission direct the IOUs to make the changes to the Joint PPA for the Re-MAT program and the associated IOU tariffs which SEIA supports in both its Opening and Reply Comments.

Respectfully submitted this 11th day of September, 2012 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone:(415) 392-7900
Facsimile:(415) 398-4321
Email: jarmstrong@goodinmacbride.com

By */s/ Jeanne B. Armstrong*
Jeanne B. Armstrong

Attorneys for the Solar Energy Industries Association

3326/011/X144229.v1

VERIFICATION

I am the attorney for the Solar Energy Industries Association (SEIA) in this matter. SEIA is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of SEIA for that reason. I have read the attached "Reply Comments of the Solar Energy Industries Association on the Third Revised Proposed Standard Form Contract and the Proposed Draft Tariffs for the Section 399.20 Feed-In Tariff Program." I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 11th day of September, 2012, at San Francisco, California.

/s/ Jeanne B. Armstrong
Jeanne B. Armstrong

GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY, LLP
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email:
jarmstrong@goodinmacbride.com

Attorneys for the Solar Energy Industries Association

3326/011/X144230.v1