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)

COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION ON PROPOSED DECISION CONDITIONALLY ACCEPTING 2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

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I. INTRODUCTION

Pursuant to the California Public Utilities Commission's ("CPUC" or "Commission") Rule of Practice and Procedure 14.3, the California Wind Energy Association ("CalWEA") respectfully submits these comments on the *Proposed Decision of Administrative Law Judge DeAngelis Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement* ("Proposed Decision").

CalWEA has reviewed the Proposed Decision and the investor-owned utilities' ("IOU") draft 2012 Renewables Portfolio Standard ("RPS") Procurement Plans (the "2012 Plans"), including the proposed *pro forma* power purchase agreements ("PPA"), submitted by Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") and related amendments. Based on this review, CalWEA recommends that the Commission should:

1. Reject PG&E's proposed revisions to the curtailment provisions of its *pro forma* PPA because the revisions fail to comply with the curtailment framework established by the Commission in Decision 11-04-030;

2. Clarify that the buyer termination right for revised transmission network upgrade cost estimates in excess of the negotiated cap cannot extend beyond the time that the interconnection agreement is executed because open-ended buyer termination rights will adversely affect the financeability of the PPA;

3. Reject the requirement for bidders to have a completed Phase II Interconnection Study prior to execution of a PPA because it imposes incremental risk on developers without corresponding benefit for ratepayers; and

4. Require SCE to hold a solicitation or, alternatively, allow SCE to enter into bilateral contracts for competitive, unique and fleeting opportunities.

Each of these recommendations is addressed in greater detail below.

II. ARGUMENT

A. The Commission Should Reject PG&E's Proposed Revisions To The Curtailment Provisions Of Its *Pro Forma* PPA Because The Revisions Fail To Comply With The Curtailment Framework Established By The Commission In Decision 11-04-030

In its 2012 Plan, PG&E proposes two major revisions to the curtailment provisions of its 2012 *pro forma* PPA. First, PG&E proposes to modify the definition of "Curtailment Order" to include any warning, forecast, or anticipated overgeneration conditions.[1] Second, PG&E proposes to modify the definition of "Buyer Bid Curtailment" to provide that "if Buyer or Buyer's [Scheduling Coordinator] submitted a Self-Schedule for the full amount of Energy

[1] PG&E Renewable Energy Procurement Plan at 60.

forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment."[2]

The Proposed Decision fails to address PG&E's proposed revisions, or various parties' related comments, directly. Instead, the Proposed Decision notes generally that "[t]he pro forma agreements serve as the starting point for negotiating a final agreement between a seller and utility" and that "the Commission prefers, in most instances, that the parties negotiate contract terms."[3] CalWEA understands that the *pro forma* PPA is a negotiable document and appreciates that the Commission prefers to let the parties negotiate the terms. However, the Commission also has a statutory duty to review and approve, reject, or modify each of the IOU 2012 Plans.[4] To the extent that an issue raised in connection with the 2012 Plans has been addressed in prior Commission orders, the Commission should assess whether the submitted plan is consistent with those prior Commission orders. Otherwise, the Commission and interested parties will be left to repeatedly address issues on a piecemeal basis each time a PPA executed pursuant to the plan is submitted to the Commission for approval. Moreover, refusing to address a 2012 Plan's inconsistency with prior Commission orders leaves developers in the untenable position of having to negotiate with the IOU on a one-off basis to obtain terms that the Commission has already indicated should be available as a starting point for the negotiations.

Here, PG&E's proposed revisions to its curtailment provisions are directly related to curtailment issues that the Commission carefully considered for more than a year in connection with the IOUs' 2010 and 2011 RPS Procurement Plans. The Commission and interested parties

[2] PG&E Amended 2012 Plan, Appendix 7A, § 1.18.
[3] Proposed Decision at 28-29.
[4] Cal. Pub. Util. Code § 399.13(c).

all committed significant resources to develop the framework for curtailment provisions that the Commission established in Decision 11-04-030, where the Commission concluded that "it is reasonable for the *pro forma* contract of each IOU to include provisions for economic curtailment."[5] However, the Commission also drew a distinction between economic curtailment, which must "reasonably bound the developer risk, such as by a maximum number of curtailment hours or other device," and "non-economic curtailment (e.g., for system reliability, safety, stability)."[6] The Commission further directed PG&E to modify its *pro forma* PPA to ensure that sellers would be compensated for economic curtailment, "even when that economic curtailment is initiated by an entity other than PG&E (such as the CAISO)."[7] Given the substantial effort that informed the curtailment framework established by the Commission in Decision 11-04-030, the Commission should ensure that this framework continues to be applied to PG&E's 2012 Plan.

Both of PG&E's proposed revisions to its curtailment provisions fail to comply with the curtailment framework adopted by the Commission in Decision 11-04-030, which requires PG&E to ensure that sellers would be compensated for economic curtailment, "even when that economic curtailment is initiated by an entity other than PG&E (such as the CAISO)" as explained further below.[8] Therefore, the Commission should reject PG&E's proposed revisions.

1. PG&E's Proposed Revision To Definition Of "Curtailment Order"

PG&E proposes to modify the definition of "Curtailment Order" to include any warning, forecast, or anticipated overgeneration conditions.[9] PG&E's proposal is inappropriate because the term Curtailment Order is used in PG&E's *pro forma* PPA to describe non-economic

[5] D. 11-04-030 at 17.
[6] *Id.* at n. 22, 24.
[7] *Id.* at 19-20.
[8] *Id.* at 19-20.
[9] PG&E Renewable Energy Procurement Plan at 60.

curtailment for which the seller is not compensated, but the CAISO manages such conditions economically. CAISO Operating Procedure 2390 (Overgeneration) provides that, if there is a forecast overgeneration condition, the CAISO will "[s]end a Market Notification via the Market Messaging system (MNS), and . . . [r]equest decremental Energy bids to mitigate the Overgeneration" prior to the CAISO's Hour-Ahead Scheduling Process.[10] The CAISO does not issue mandatory curtailments based on a warning, forecast, or anticipated overgeneration condition; rather, mandatory curtailments are not used until actual overgeneration conditions occur in real time.[11]

Because anticipated overgeneration conditions are subject to market responses, PG&E should be required to use the economic curtailment provisions of its *pro forma* PPA, which provide PG&E with the right to curtail projects a minimum of 250 hours per year, to address these conditions. In contrast, if the Commission were to accept PG&E's proposal, PG&E would be permitted to curtail the seller without compensation in order to provide a market response. This outcome violates the Commission's directive in Decision 11-04-030 that PG&E must provide compensation for economic curtailment. Accordingly, the Commission should reject PG&E's proposal to modify the definition of "Curtailment Order" in its draft 2012 *pro forma* PPA to include any warning, forecast, or anticipated overgeneration conditions.

2. PG&E's Proposed Revision To Definition Of "Buyer Bid Curtailment"

PG&E proposes to modify the definition of "Buyer Bid Curtailment" to provide that "if Buyer or Buyer's SC submitted a Self-Schedule for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of

[10] CAISO Operating Procedure 2390 § 3.1.1.
[11] *Id.* § 3.1.2.

requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment."[12] In other words, if PG&E submits a Self-Schedule for the forecasted output, then any subsequent curtailment is automatically deemed uncompensated curtailment regardless of the reason for the curtailment. The Commission should reject this revision because it is susceptible to an interpretation that would absolve PG&E of any responsibility for economic curtailment that may occur after PG&E's initial submission of a Self-Schedule.

PG&E's proposal to automatically categorize any curtailment that occurs after PG&E's initial submission of a Self-Schedule as uncompensated curtailment fails to comply with the Commission's prior direction that sellers should be compensated for economic curtailment because PG&E, as the generating facility's scheduling coordinator, can still cause the project to be economically curtailed. For example, PG&E could submit a Self-Schedule for the forecasted output in the day-ahead market and then subsequently submit an economic bid that could result in the CAISO directing the generating facility to reduce its output. In such a case, the generating facility would be subject to economic curtailment based on the price specified in PG&E's bid notwithstanding the prior submission of a Self-Schedule. Because this is a form of economic curtailment, the seller should be compensated in this circumstance. In contrast, if the Commission were to accept PG&E's proposal, the seller would be subject to potential economic curtailment without compensation. This outcome would violate the Commission's direction in Decision 11-04-030 that PG&E must ensure that sellers would be compensated for economic curtailment, "even when that economic curtailment is initiated by an entity other than PG&E

[12] PG&E Amended 2012 Plan, Appendix 7A, § 1.18.

(such as the CAISO)."[13] Accordingly, the Commission should reject PG&E's proposal to modify the definition of "Buyer Bid Curtailment" in its draft 2012 *pro forma* PPA.

B. The Commission Should Clarify That The Buyer Termination Right For Revised Transmission Network Upgrade Cost Estimates In Excess Of The Negotiated Cap Cannot Extend Beyond The Time That The Interconnection Agreement Is Executed Because Open-Ended Buyer Termination Rights Will Adversely Affect The Financeability Of The PPA

The Proposed Decision requires SDG&E and PG&E to "incorporate terms into their respective pro forma agreements regarding termination rights and buy-down provisions in the event that the results of any interconnection study or agreement indicate that network upgrade costs will exceed a specific amount agreed to by seller and the utility."[14] While CalWEA understands the rationale for the proposed buyer termination right, CalWEA is concerned that the implementation of this termination right would adversely affect the financeability of the PPA if there is not an explicit date after which the termination right ceases to apply. Accordingly, CalWEA requests that the Commission revise the Proposed Decision to clarify that the buyer termination right for revised transmission network upgrade cost estimates in excess of the negotiated cap is limited to interconnection studies provided before the interconnection agreement is executed.[15]

The Proposed Decision states that the buyer termination right would apply, subject to the buy-down provisions, "in the event that the results of *any interconnection study or agreement* indicate that network upgrade costs will exceed a specific amount agreed to by seller and the

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[13] D. 11-04-030 at 19-20.

[14] Proposed Decision at 31. While this portion of the Proposed Decision is directed at PG&E and SDG&E, this requirement should also be applied to any future solicitation by SCE.

[15] The Commission should require the IOUs to clarify that this termination right is not applicable to existing projects, including existing qualifying facilities ("QFs"). Existing QFs are able to transition from their original QF-based interconnection arrangements to contemporary interconnection arrangements through the QF conversion process, which does not require the projects to enter the transmission interconnection queue.

utility." (emphasis added)[16] Given the realities of the financing and interconnection processes, this language is much too broad. To obtain financing, a developer needs to show financing parties that it has a relatively stable source of revenue for the project. This is normally accomplished through an executed PPA. However, to ensure that the revenue source is relatively stable, the financing parties will expect that the PPA will not be subject to termination for reasons outside the developer's control, such as a change in network upgrade cost estimates.

While the CAISO tariff generally provides that new interconnection requests will result in a Phase I Interconnection Study and a Phase II Interconnection Study, the CAISO commonly issues "revised" studies and study "addenda."[17] Moreover, these "revisions" and "addenda" are often provided after the passage of significant amounts of time, including after the interconnection agreements have already been signed. Thus, the reference to "any interconnection study or agreement" in the Proposed Decision is much too broad because the buyer termination right for increased network upgrade costs could be triggered at any time during the term of the PPA, which would render the availability of PPA revenue highly uncertain.

Recognizing that there is a tension between the desire to ensure that network upgrade costs associated with a project do not escalate significantly in a way that alters the original evaluation of the project and the financing parties' need to avoid PPA termination for reasons outside the developer's control, CalWEA proposes that the trigger for the buyer termination right for increased network upgrade costs estimates should be limited to cost estimates in any interconnection study or agreement provided to the seller prior to execution of the interconnection agreement. This still protects the buyer from increases in network upgrade cost

[16] Proposed Decision at 31.
[17] *See e.g.*, CAISO Tariff App Y § 6.10.

estimates beyond the cap during the typical interconnection study cycle, which occurs prior to execution of the interconnection agreement. The proposal also provides financing parties with the assurance they need that the PPA will not be terminated due to a revised interconnection study issued at some point in the future based on changed study assumptions over which the seller has no control. Accordingly, CalWEA requests that the Commission revise the Proposed Decision to clarify that the buyer termination right for revised transmission network upgrade cost estimates in excess of the negotiated cap is limited to interconnection studies provided before the interconnection agreement is executed.

C. The Commission Should Reject The Requirement For Bidders To Have A Completed Phase II Interconnection Study Prior To Execution Of A PPA Because It Imposes Incremental Risk On Developers Without Corresponding Benefit For Ratepayers

The Proposed Decision requires PG&E and SDG&E "to modify their bid solicitation protocols to require that projects will need to have the minimum of a completed CAISO GIP Phase II (or equivalent) study to execute a contract."[18] Requiring a completed Phase II Interconnection Study (or equivalent or better) for execution of a PPA unnecessarily exposes developers to incremental risk without providing any corresponding benefit to ratepayers. Accordingly, the Commission should reject the requirement for bidders to have a completed Phase II Interconnection Study prior to execution of the PPA.

The requirement to have a Phase II Interconnection Study prior to execution of the PPA unnecessarily exposes the developer to incremental risk in the CAISO interconnection process. Interconnection customers are required to make incremental financial security postings on or before 180 days after receipt of the Phase II Interconnection Study.[19] A portion of this incremental financial security posting is non-refundable, even in the event that the

[18] Proposed Decision at Ordering Paragraph 11.
[19] CAISO Tariff App. Y § 9.3.1.

interconnection customer needs to withdraw its interconnection request because it is unable to obtain a PPA, or unable to obtain Commission approval of an executed PPA.[20] Given that Commission disposition of an executed PPA typically takes more than 180 days from the time a PPA is executed, requiring bidders to have a Phase II Interconnection Study prior to execution of the PPA would require bidders to put the incremental financial security posting at risk before the bidders know whether the PPA will be approved. In contrast, if the PPA can be executed before the bidder receives its Phase II Interconnection Study, the bidder may have knowledge of whether the PPA has been approved by the Commission prior to putting additional money at risk.

Moreover, the requirement for bidders to have a completed Phase II Interconnection Study prior to execution of the PPA does not provide any incremental value to ratepayers. The Proposed Decision already requires all bids to have completed Phase I Interconnection Studies (or equivalent or better), so the IOUs will already have a meaningful transmission cost estimate on which to make its shortlisting decision.[21] While the Phase II Interconnection Study may result in different estimated transmission costs, the Proposed Decision already requires the *pro forma* PPAs to include a buyer termination right in the event that the network upgrade cost estimates increase beyond a negotiated threshold, subject to the seller's right to buy-down the excess costs, as discussed above. Thus, ratepayers are already protected against an increase in network upgrade costs relative to the estimates applied to evaluate the bid. As a result, there is no need to delay PPA negotiation and execution until the Phase II Interconnection Study is completed and expose bidders to incremental risk.

[20] CAISO Tariff App. Y § 9.4.
[21] Proposed Decision at Ordering Paragraph 11.

Accordingly, the Commission should reject the requirement for bidders to have a completed Phase II Interconnection Study prior to execution of the PPA because it exposes developers to incremental risk without any corresponding ratepayer benefit.

D. The Commission Should Require SCE To Hold A Solicitation Or, Alternatively, Allow SCE To Enter Into Bilateral Contracts For Competitive, Unique And Fleeting Opportunities

The Proposed Decision accepts SCE's proposal to forego a 2012 RPS solicitation, but rejects "SCE's request to execute bilateral contracts during the time period covered by its 2012 RPS Procurement Plan."[22] CalWEA supports regular RPS solicitations as a mechanism to provide consistent opportunities for developers to compete for IOU RPS contracts and produce updated market pricing information for the Commission's use in the administration of the RPS program. Accordingly, CalWEA recommends that the Commission direct SCE to hold a 2012 RPS solicitation.

Alternatively, if the Commission declines to require SCE to hold a solicitation, the Commission should allow SCE to continue to engage in bilateral contracting, subject to the condition that SCE must demonstrate to the Commission that the bilateral contract represents a competitive, unique and fleeting opportunity that is not expected to be available in the next solicitation. CalWEA acknowledges the Proposed Decision's concern that the lack of a solicitation will likely reduce the pricing data available for evaluation of a bilateral PPA,[23] but there are still other sources of pricing data that the Commission can use to evaluate the bilateral PPA, such as the PG&E and SDG&E solicitation data and SCE's Renewable Auction Mechanism results. Moreover, developments in the marketplace, such as an extension of the production tax credit, may result in unique or time-limited opportunities for developers and SCE

[22] *Id.* at 2.
[23] *See id.* at 55.

to enter into bilateral agreements that benefit ratepayers. However, SCE should not be permitted to bypass the solicitation process entirely by entering into bilateral contracts for projects that could wait for SCE's next RPS solicitation.

To balance these concerns, the Commission should allow SCE to enter into bilateral contracts during the time period covered by its 2012 Plan, subject to the condition that SCE must demonstrate to the Commission that the bilateral contract represents a competitive, unique and fleeting opportunity that is not expected to be available in the next solicitation.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,

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October 29, 2012

VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the California Wind Energy Association on Proposed Decision Conditionally Accepting 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 October 29, 2012 at Berkeley, California.

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Nancy Rader

Executive Director, California Wind Energy Association