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 DIVISION OF RATEPAYER ADVOCATES ON PROPOSED DECISION CONDITIONALLY ACCEPTING 2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED RESOURCE PLAN OFF-YEAR SUPPLEMENT

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3 of the Rules of Practices and Procedure of the California Public Utilities Commission (the "CPUC" or "Commission"), the Division of Ratepayer Advocates ("DRA") submits these comments on the October 9, 2012 Proposed Decision of Administrative Law Judge DeAngelis Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement ("PD" or "Proposed Decision").

The PD conditionally accepts, with some modifications, the 2012 Renewables Portfolio Standard ("RPS") Procurement Plans, including the related solicitation protocols, filed by Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E"). Among other things, the PD accepts SCE's request not to hold a 2012 RPS solicitation but rejects SCE's request to execute bilateral contracts during the time period covered by its 2012 Procurement Plan. The PD also defers consideration on a number of issues related to PG&E's, SCE's and SDG&E's RPS procurement activities to later in the proceeding.

DRA generally supports the PD's modifications for PG&E, SCE, and SDG&E's 2012 RPS Procurement Plans. In particular, DRA supports the PD's finding that SCE can forgo a 2012 RPS solicitation, but that it cannot execute bilateral contracts during the same period of time.[1] As DRA previously noted, the investor-owned utilities ("IOUs") have historically compared bilateral offers to those in their RPS request for offers ("RFO"s).[2] The absence of an RFO would make it difficult to compare whether a bilateral offer is competitive to current market prices.[3]

DRA supports most of the PD's proposed modifications, but the PD fails to address two crucial issues raised by DRA in this proceeding. First, the PD does not address the success rate for RPS projects assumed by the IOUs in their planning process. Second, the PD does not address PG&E's proposal to include a voluntary margin of over-procurement of renewable energy. Finally, DRA recommends that the PD be clarified to ensure that ratepayers are not

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[1] PD at 52-55.

[2] *See e.g.* Comments of DRA on SCE's Response to Administrative Law Judge's Ruling Requesting Additional Information from SCE Regarding Proposal Not to Hold a 2012 RPS Solicitation, September 10, 2012, at 3.

[3] PD at 55 ("Without a solicitation, the Commission will not be able to adequately determine the reasonableness of bilateral contracts as no comparable market data for SCE will exist for the Commission to exist for the Commission to compare with the bilateral contract (assuming that the facility is greater than 20 MW [megawatts] in size.")

required to assume network upgrade costs that exceed the cost cap agreed to by the buyer and seller as set forth in the pro forma contract.

II. DISCUSSION

A. The Commission Should Revise The PD to Direct SCE and SDG&E to Use a Success Rate That Better Reflects Recent RPS Contract Success Rates and Other Factors.

DRA recommended that the Commission direct SCE and SDG&E to assume a success rate for RPS projects that better reflect recent contract success rates.[4] This is a critical issue for ratepayers because the RPS project success rate used by the IOUs has a direct impact on procurement costs. However, the PD does not address success rates for projects that have been executed but are not yet online. More specifically, the PD fails to address the 60% success rate used by SCE and SDG&E in their draft procurement plans for projects which are executed but not yet online.[5]

In DRA's Opening Comments on the RPS procurement plans, DRA explained that SCE's proposed 60% success rate appears unrealistically low. Based on the most recent data from the IOUs' March 2012 Compliance Reports, DRA recommended that the Commission direct SCE to use a more realistic success rate such as 77% or higher for going forward projects that better reflects recent RPS contract success rates.[6]

In order to ensure a more efficient procurement plan and reduce the risk of over-procurement, DRA continues to recommend that the Commission direct SCE and other IOUs to use a success rate of 77% or higher to calculate their net short position. SCE calculated a 60% success rate based on individual project characteristics as well as contingencies arising from "delays due to transmission, curtailment, material shortages, load growth beyond that which is forecasted, or less than expected output from resources."[7] However, a worst-case scenario in which all of these contingencies would occur is extremely unlikely. It is more likely that the opposite could occur for some contingencies – such as lower than expected load growth or higher than expected output from resources – implying a realistic success rate that is higher than

[4] The Division of Ratepayer Advocates Comments on Renewable Portfolio Standard Plans, June 27, 2012 (DRA RPS Plan Comments) at 3, 15.

[5] SCE's 2012 RPS Procurement Plan, May 23, 2012 (SCE RPS Procurement Plan) at 18 and SDG&E's 2012 RPS Procurement Plan, May 23, 2012, at 4. SCE's success rate changed to 65%, 56%, and 50% for Compliance Periods 1, 2, and 3, respectively, in Southern California Edison Company's First Amended 2012 Renewables Portfolio Standard Procurement Plan, August 15, 2012 at 6.

[6] DRA RPS Plan Comments at 3-4.

[7] SCE RPS Procurement Plan at 18.

60%. Moreover, the market is becoming more mature and developers are becoming more experienced, which would increase the likelihood of success. The Commission should revise the PD as reflected in Appendix A to direct SCE and SDG&E to use a success rate of 77% (or higher) that better reflects recent RPS contract success rates and other factors.

B. The Commission Should Revise the PD To Address PG&E's Voluntary Margin of Over Procurement With Banked Surplus Energy and Its Project Failure Rate.

The PD does not address PG&E's proposal to include an additional voluntary margin of over procurement in its annual procurement needs. DRA acknowledges that integrating a voluntary margin is important as it provides additional safeguards for the IOUs to meet their compliance period targets. PG&E's proposed voluntary margin of over procurement would be equal to an additional 1-2% of total retail sales for an average additional, long-term over procurement margin of 1.5%.[8] PG&E also proposes to adjust the percentage of its voluntary margin of over procurement to account for fluctuations in its banked surplus.[9] An additional margin of over procurement would be unnecessary for compliance periods in which PG&E is over procured.

To avoid confusion about the use of margin of over procurement, DRA recommends that the Commission establish clear guidelines for IOUs on how to utilize this tool with other procurement safeguards. For instance, the PD should clarify that the IOUs should only be allowed to apply a voluntary margin of over-procurement on an <u>annual basis or by compliance period, but not throughout the remaining years of the RPS program through 2020</u>.[10] That is, a voluntary margin of over procurement should only be authorized to make up for <u>annual</u> or compliance period variations in RPS deliveries and other unanticipated changes, <u>**not** long-term issues related to project development success rates.</u> [11] The IOUs should not be allowed to procure an additional margin of resources across compliance periods in circumstances where they have already over procured, as this would be too costly for ratepayers. More specifically, the IOUs should: (1) only be permitted to apply the voluntary margin on an annual or compliance period basis; (2) be required to utilize any surplus banked energy before procuring an additional

[8] PG&E Renewables Portfolio Standard 2012 Renewable Energy Procurement Plan (Draft Version), August 15, 2012 (PG&E RPS Procurement Plan) at 53-54.

[9] *Id;* DRA RPS Plan Comments at 9.

[10] In its 2012 Procurement Plan, PG&E states that this voluntary margin would be used as needed on an annual basis (PG&E Procurement Plan at 54).

[11] DRA RPS Plan Comments at 10-11.

margin of resources; and (3) justify why this margin is necessary and specify how it plans to fill the resource deficit.[12]

C. The Commission Should Clarify That Ratepayers Will Not be Responsible For Network Upgrade Costs That Exceed The Specific Amount Agreed To By Seller and The Utility.

The PD adopts proposed new terms in SCE and SDG&E's pro forma contract agreements to allow for contract termination based on transmission upgrade costs that exceed an amount agreed to by the seller and the utility.[13] In lieu of termination, a seller may buy down the transmission costs that exceed the transmission upgrade cost cap.[14] DRA agrees with the PD's conclusion that the transmission upgrade cost terms represent "reasonable means of seeking to limit the total RPS procurement costs to ratepayers by linking termination rights to caps on transmission network upgrade costs."[15] DRA supports the transmission upgrade cost cap and buy-down provision in the pro forma agreements proposed in the PD, but recommends that the Ordering Paragraph explicitly clarify that ratepayers are not responsible for costs incurred in excess of the transmission upgrade cost cap agreed to by the seller and the utility.

III. CONCLUSION

DRA requests that the Commission adopt the PD with the modifications suggested in these Comments. This includes requiring the IOUs to account for a success rate of 77% (or higher) that better reflects recent RPS contract success rates and a voluntary margin of over procurement that is only authorized to make up for annual fluctuations. DRA's recommended modifications will help provide additional procurement safeguards for ratepayers.

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[12] DRA RPS Plan Comments at 10-11

[13] PD at 29.

[14] PD at 29.

[15] PD at 30.

Respectfully submitted,

/s/ DIANA L. LEE

Diana L. Lee
Staff Counsel

Attorney for the Division of Ratepayer Advocates

APPENDIX A

DRA's PROPOSED CHANGES TO FINDINGS OF FACT. CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

Findings of Fact

26a.SCE and SDG&E proposed a 60% success rate for projects which are executed but not yet online, whereas PG&E proposed a 78% success rate for projects which are executed but not yet online.

26b. PG&E's proposed voluntary margin of over procurement would be equal to an additional 1-2% of toil retail sales for an average additional, long-term over procurement margin of 1.5%.

Conclusions of Law

12a The findings suggest that SCE and SDG&E's 60% success rate for projects which are executed but not yet online is unrealistically low.

12b. A utility should not retain surplus or banked energy and also elect to procure additional resources above and beyond an assumed project failure rate.

O R D E RING PARAGRAPHS

8.In the final 2012 Renewables Portfolio Standard Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) shall 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. This directive applies to future pro forma agreements filed by PG&E and SDG&E unless otherwise directed by the Commission. While Southern California Edison Company (SCE) will not hold a 2012 solicitation, this requirement shall apply to future use of its pro forma agreement unless otherwise directed by the Commission. Neither PG&E, SDG&E, nor SCE shall be allowed to recover from ratepayers network upgrade costs that exceed the specific amount agreed to by seller and the utility.

11a.In the final 2012 Renewables Portfolio Standard Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall use a success rate of 77% or higher that better reflects recent RPS contract success rates.

11b.In the final 2012 Renewables Portfolio Standard (RPS) Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company(SDG&E) shall (1) only be permitted to apply the voluntary margin on an annual or compliance period basis; (2) be required to utilize any surplus banked energy before procuring an additional margin of resources; and (3) justify why this margin is necessary and specify how it plans to fill the resource deficit.

VERIFICATION

I, Diana L. Lee, am counsel of record for the Division of Ratepayer Advocates in proceeding R.11-05-005, and am authorized to make this verification on the organization's behalf. I have read the **COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSEDDECISION CONDITIONALLY ACCEPTING 2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED RESOURCE PLAN OFF-YEAR SUPPLEMENT** filed on **October 29, 2012**. 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 are true and correct.

Executed on **October 29, 2012** at San Francisco, California.

Respectfully,

/s/ Diana L. Lee____
Diana L. Lee