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)

OPENING COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE PROPOSED DECISION OF ALJ DEANGELIS CONDITIONALLY ACCEPTING 2012 RENEWABLE PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED RESOURCE PLAN OFF-YEAR SUPPLEMENT

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Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Large-scale Solar Association ("LSA") respectfully submits these opening comments on the Proposed Decision of ALJ DeAngelis Conditionally Accepting the 2012 Renewable Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement ("Proposed Decision" or "PD").

These Opening Comments focus on LSA's three areas of concern in the Proposed Decision, 1) the approval of SCE's request not to hold a 2012 Solicitation and restriction on bilateral contracting; 2) the 12-month shortlist expiration and Phase II study requirements; and 3) the approval of new Time of Delivery Factors.

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I. The Commission has overly constrained procurement by accepting SCE's Request not to hold a 2012 Solicitation and disallowing bilateral contracts during the same period.

LSA is concerned that the Proposed Decision not only accepts SCE's request not to hold a 2012 Solicitation, but that in addition the Commission proposes further restricting SCE from entering bilateral contracts during this period. LSA understands that this restriction is in place until the adoption of the proposed Procurement Reform Rules designed to set new Standards of Review for bilateral contracts.[1] However, LSA believes that the Commission needs to allow for bilateral contracting in the interim, as we are concerned that any contracting through the RAM program and existing RPS contracts may not be able to address SCE's potential need resulting either from further work on the net short calculator or possible contract failure.

The lack of opportunity for any large-scale contracting with SCE during this period also threatens to preclude both projects and SCE from taking advantage of the ITC prior to its 2016 sunset. The Proposed Decision acknowledges the ITC's expiration date and comes to the conclusion, without substantial evidence, that projects that are bid under a 2012 Solicitation will *not* be able to take advantage of the ITC. This is incorrect. As LSA explained in its June 27 Comments, in order to take advantage of the ITC, new projects need executed contracts by 2014, this falls well into the timeframe for the 2012 solicitations.[2] LSA requests that the Commission correct this factual error and urges the Commission to allow the IOUs sufficient flexibility to take advantage of the expiring ITC.

While the Commission reasonably wants assurance that contract prices are competitive, the Commission has sufficient market information to judge price reasonableness. Furthermore, LSA can see no upside to restricting procurement options. Allowing for maximum procurement

[1] Proposed Decision at p. 55.
[2] LSA Comments on 2912 RPS Procurement Plans and ACR at p. 4 (June 27, 2012).

flexibility in order to capture opportunities for consumer benefit, particularly with the forthcoming sunset of the ITC, provides numerous benefits. While LSA maintains that a SCE RFO in 2012 is the best outcome, there is no reason to restrict bilateral opportunities if a RFO is postponed until 2013. It should be noted, however, that if a 2012 RFO is postponed and bilateral options are restricted, it is highly unlikely that new projects could be solicited, approved, and constructed in time to meet the 2016 ITC sunset. LSA also notes that in April 2011, the Commission reversed a prohibition on bilateral contracting in a rehearing of the Renewable Auction Mechanism order.[3] The primary consideration in reversing restriction on bilateral contracting was that it was detrimental to consumers and could result in forgone contracting opportunities. While SCE has stated that it lacks RPS need until the third compliance period, there is no reason to stifle the market in the meantime and foreclose creative contracting structures that may arise to meet that need through commitments that allow developers to capture the ITC by 2016.

II. The combination of changes in the Proposed Decision has resulted in procurement requirements that are overly restrictive.

LSA applauds the Commission for its efforts to streamline the contracting process and ensure that viable contracts are executed. However, the Proposed Decision has over-shot the mark and in doing so created overly restrictive procurement requirements. Of particular concern, is that the PD not only approves requirements that separately are too restrictive, but that the Commission fails to evaluate the potential impact the combination of new procurement requirements. In doing so, and by raising the bar too high, the Commission runs the very real risk that this effort will

[3] See D.11-04.008, *Decision Granting Petitions for Modification of Decision 10-12-048 Filed by NextEra Energy Resouces and the Independent Energy Producers Association* at p.7 (April 20, 2011).

result in the execution of too few projects to make a meaningful comparison on value and price, thus impeding RPS progress.

LSA urges the Commission to reconsider its approval of both the 12-month shortlist expiration and the requirement for the completion of Phase II transmission studies at the time of contract execution. LSA is generally supportive of the Commission having more detailed transmission information, but as proposed, these requirements are overly restrictive and commercially unreasonable. LSA is concerned that the timing of the concurrent requirements for the completion of Phase II studies and the abbreviated 12-month shortlist will impede otherwise viable projects. As we noted in earlier comments, there are a myriad of factors that impact negotiations between parties, and some of the past delays in the negotiation process were due to factors outside the sellers control.[4] In particular, sellers do not have control over the CAISO s study process, and these new requirements allow no flexibility to account for delays outside of the seller s control. If historic procurement and negotiation patterns are any indication, this approach will not achieve the intended results, but rather threatens to preclude viable projects that may not be able to be rebid due to timing conflicts. This result is neither acceptable or in keeping with the intent of the proposed requirements.

LSA urges the Commission to adopt a more flexible approach and set the 12-month limit as a goal for, rather than a requirement, at least for the 2012 Solicitations. LSA has noted SDG&E s recent timely execution of contracts, but believes that setting a 12-month goal for this Solicitation is a more appropriate transitional step towards mandating shorter process timeframes, particularly given the additional hurdle of requiring GIP Phase II studies at the time of contract execution. In addition, LSA anticipates that it will be beneficial for the Commission to analyze how each utility fares in reaching this goal and receive feedback from the independent

[4] LSA Reply Comments on 2012 RPS Procurement Plans and ACR at pp. 8-9 (July 18, 2012) .

evaluators and stakeholders regarding the impact and any new challenges created by these new requirements.

III. The Proposed Decision's acceptance of the new Time of Delivery Factors is flawed.

LSA believes the Proposed Decision erred in its acceptance of the new Time of Delivery Factors (TOD Factors). In the Proposed Decision, the Commission rejects LSA's request that the previous TOD Factors be used until the new TOD Factors have been vetted, by misplacing the burden of proof that they are flawed on LSA. LSA's position is not, however, that the TOD Factors are flawed, but that they are a black box. The new TOD Factors have been significantly modified, while the PUC has failed to provide parties with sufficient information to evaluate either the methodologies used or the changes proposed.[5] Indeed, as the Commission notes in the Proposed Decision, even the Commission has yet to evaluate the methodologies used to develop them and defers that evaluation to a subsequent part of this proceeding.[6] Given the lack of information, LSA and other parties have little basis to prove that the TOD Factors or methodology are flawed or appropriate. If there had been an evidentiary record, LSA and others could have undertaken this evaluation. The Proposed Decision in this regard, fails to address this issue logically. If the Commission is going to examine the methodologies used to develop the new TOD Factors, then it should do so prior to accepting the new factors, not at some unspecified later date following their adoption. Therefore, LSA urges the Commission to amend the Proposed Decision to defer acceptance of new TOD factors until the methodology is reviewed in an open process by Commission staff and stakeholders.

[5] LSA Comments on 2912 RPS Procurement Plans and ACR at pp. 9-10.
[6] Proposed Decision at p. 37

IV. LSA Supports the Commission's Decision to Assign a "Zero" Value to Integration Costs Until a Value is Established via an Open Public Process.

LSA strongly supports the Commission's reaffirmation of its prior directives to disallow a non-zero number for integration costs for inclusion in the net market value (NMV) calculation, until a value is established via an open public process. LSA, along with several other parties, in comments filed on June 27th, supported the position of assigning a zero value to integration costs to the NMV calculation in the 2012 Procurement Plans. In those comments, LSA also provided specific recommendations to the Commission for a subsequent process, inputs, and baseline requirements to determine the integration cost adder, and reiterates those points by reference herein.[7]

CONCLUSION

LSA appreciates the opportunity to provide these comments on the Proposed Decision. LSA urges the Commission amend the Proposed Decision to address the issues raised in these comments.

Dated: October 29, 2012

Respectfully Submitted,

/s/ Rachel Gold

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[7] Id. at p.6.

Appendix

Proposed Revisions to Finding of Fact and Conclusions of Law

Deletions are shown in strike-through and additions are show in bold underlined text.

1) Findings of Fact

   a) **Modify Finding of Fact 13**. The April 5, 2012 ACR presented a proposal that bids shortlisted by the utilities would have to be executed, if at all, within 12 months from the date that the utility submits its final shortlist to the Commission. The benefits of being able to compare a contract's value and price to current solicitation data ~~outweighs~~ **do not outweigh** the concerns regarding adopting a limited contract negotiation period.

   b) **Modify Finding of Fact 14**. The proposal presented in the April 5, 2012 ACR for the shortlist to expire after 12 months **is commercially unreasonable** ~~ensures consistency~~ by prohibiting the utility to then execute a bilateral contract for the same project until a subsequent solicitation is initiated. ~~The project is permitted to bid into any subsequent RPS solicitation.~~

   c) **Delete Finding of Fact 16.** ~~LSA does not provide adequate evidence or argument that PG&E's or SCE's proposed new Time of Delivery factors are flawed.~~

   d) **Modify Finding of Fact 20.** Projects bidding into the 2012 RPS solicitation **may** ~~will most likely~~ propose contracts ~~commencing after~~ **that take advantage of** the Production Tax Credit and the Investment Tax Credit ~~expire~~.

   e) **Modify Finding of Fact 23**. During the time period covered by the 2012 RPS Procurement Plans, SCE ~~can~~ **may not be able to** address any unmet RPS compliance needs through smaller-scale renewable facilities that are less than 20 MW in size~~.~~ **Limiting contracting opportunities is detrimental to consumers.**

2) Conclusions of Law

   a) Modify Conclusion of Law 11. It is **not** reasonable to require the shortlist to expire 12 months after approval by the Commission**. The benefits** ~~because the benefits~~ of being able to compare a contract's value and price to current solicitation data **do not** outweigh~~s~~ the concerns regarding the constraints imposed by a limited negotiation period. **It is reasonable to set a 12-month goal for contract execution in order to evaluate the impact of a 12-month requirement and promote timely execution of contracts.**

   b) Modify Conclusion of Law 12. Because **more analysis is needed to understand the changes to the Time of Delivery factors the utilities are not permitted to use new Time of Delivery factors.** ~~utilities are permitted to receive two types of~~

~~bids (energy-only or fully deliverable), we find it reasonable for the utilities to apply different sets of Time of Delivery factors to these two types of bids.~~

c) Modify Conclusion of Law 13. The goals of the April 5, 2012 ACR to rely on the most current and accurate cost information at key decision points in the RPS procurement process and to maximize value to the ratepayer are achieved by requiring bids to obtain a minimum of a completed CAISO GIP Phase I (or equivalent) study to bid into the solicitation. These goals are **not** ~~further~~ achieved by requiring projects to have the minimum of a completed CAISO GIP Phase II (or equivalent) study in order for a contract to be executed **at this time.**

d) **Modify Conclusion of Law 18.** SCE's proposal to not hold a 2012 RPS solicitation is **not** reasonable based on the explanation that, during the time period covered by the 2012 RPS Procurement Plans, SCE will address any unmet RPS compliance needs through smaller-scale renewable facilities that are less than 20 MW in size, **as it may not be possible to cover unmet need through smaller-scale contracts and restricting contracting opportunities is detrimental to consumers.**

e) **Modify Conclusion of Law 19**. SCE's proposal that it will consider offers for bilateral contracts during the time period covered by the 2012 RPS Procurement Plans is ~~not~~ reasonable, **as a restriction on bilateral contracting during this period would be detrimental to consumers and could result in forgone contracting opportunities.** ~~because price reasonableness of such contracts is evaluated by comparison to the annual solicitation, which SCE will not hold.~~

VERIFICATION

I, Rachel Gold, am the Policy Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare that the statements in the foregoing copy of *Opening Comments of the Large-scale Solar Association on the Proposed Decision* 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.

/s/ Rachel Gold

Rachel Gold
Policy Director, Large-scale Solar Association