
October 22, 2012

Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
EDtariffunit@cpuc.ca.gov

**Re: Large-scale Solar Association's Comments On Draft Resolution E-4546, Changes to the Renewable Auction Mechanism**

Dear Energy Division:

The Large-scale Solar Association is pleased to provide these comments on Draft Resolution E-4546 ("Draft Resolution"), proposing changes to the Renewable Auction Mechanism ("RAM") for Pacific Gas & Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

LSA's comments on the Draft Resolution focus on the utility buyer's unilateral termination right for network upgrade costs that exceed a seller's RAM bid estimates by $100,000 or 25%, whichever is less (the "Unilateral Termination Right") and the Resource Adequacy Damages clause which, as amended by the Draft Resolution, requires sellers to bear the cost of meeting Resource Adequacy ("RA") regardless of whether seller is responsible for any delay in achievement of full capacity deliverability status. LSA believes that these two changes, as proposed in the Draft Resolution, are legally and factually flawed and urges the Commission to reject both, without significant modifications. LSA is not opposed to either clause in principal. However, as proposed, both clauses have the potential to derail the RAM Program by making projects not financeable. Should the Commission determine that either or both of these clauses are necessary, and supported by sufficient evidence, we recommend the Commission incorporate the amendments outlined below, that will allow sellers enough certainty to obtain financing, while ensuring ratepayers are protected.

## 1. The Draft Resolution's approval of the Unilateral Termination Right constitutes a legal error.

As LSA has noted in its prior RAM filings, the Commission has a clear established standard for modifications to the RAM program. In D. 10-12-048 (the "RAM Decision"), the Commission stated that any changes and recommendations made to the RAM Program must be

based on evidence and be necessary to improve the program.[1] Resolutions E-4414 and E-4489 amended the RAM Decision, but did not alter the standard for program modification.[2]

The Draft Resolution states that the changes were evaluated based on this standard that these changes will improve the RAM program while at the same time noting that the utilities have failed to produce evidence that ratepayers have been exposed to excessive increases due to network upgrade costs.[3] Despite the lack of evidence, the Draft Resolution concludes that the change is necessary in order to protect ratepayers.[4] In reaching this conclusion, the Energy Division ignores the Commission's own standard for RAM modifications and its prior findings in Resolution E-4414 that a similar termination right was arbitrary.[5] Given this, LSA urges the Energy Division to deny the utilities' request for a unilateral termination right for network upgrade costs.

Although the Unilateral Termination Right is unsupported by evidence, LSA supports the Energy Division's interest in protecting ratepayers from the possibility of excessive network upgrade costs, which we agree could undermine the RAM program.[6] We believe that it is feasible to draft a termination right with a commercially reasonable cost cap that provides sufficient clarity to enable financing and also balances ratepayer interests. However, the termination right as proposed in the Draft Resolution does not achieve this and jeopardizes the RAM Program by undermining renewable project financing.

Below we outline LSA's main concerns with the unilateral termination clause as drafted:

**a. The timing of the unilateral termination right needs to be clarified and limited to cost estimates that increase prior to the execution of an Interconnection Agreement.**

The Draft Resolution does not specify the development stage at which estimated network upgrade cost increases could trigger termination or when they would expire. This is of serious concern to LSA, as the lack of clarity in this provision renders projects not financeable because it exposes sellers to termination risk after an Interconnection Agreement is signed and a project is fully financed. We recommend that this section be amended to specify that the termination right only applies to studies or estimates completed before the Interconnection Agreement is executed. Further, LSA recognizes that to prevent any potential, but highly unlikely, abuse by sellers, any modification to the project requested by the seller subsequent to the original Interconnection Agreement that may not rise to the level of a "material modification" under the Interconnection Agreement or procedures, but has the effect of increasing the cost of reimbursable upgrades, may also lead to potential termination, subject to commercially reasonable cost caps.

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[1] D.□□-□2-□48, *Decision Adopting t he Renewable Auction Mechanism* , issued December □7, 2□□□at p. 4 and p. 88.
[2] Resolution E-44□4, issued August 22, 2□□□; p. 2. Resolution E -4489, issued April □8, 2□□□;p. 3.
[3] Draft Comment Resolution E -4546, published October 2, 2□□2, p. 4.
[4] Id., p. □□
[5] Resolution E-44□4, issued August 22, 2□□□; p. □7 and Finding and Conclusion □6 on p. 4□
[6] See SEIA/LSA Comments on Draft Resolution E -4499 (April 9, 2□□2)

**b. The proposed cost caps are not commercially reasonable as they are not linked to actual network upgrade costs likely to confront RAM projects and would put most RAM projects at risk of termination.**

LSA is concerned that the cost caps proposed are not commercially reasonable, nor are they based on evidence. As proposed, the cost caps would be the lesser of $100,000, or 25% over the cost of network upgrades estimated in the seller's RAM bid. As noted above, the Commission has rejected prior utility proposals for Unilateral Termination rights based on "arbitrary" transmission upgrade cost caps.[7] The cost caps proposed in the Draft Resolution are also arbitrary, as they are not based on evidence nor are they commercially reasonable. The cost caps as proposed will be easily exceeded by most projects. Recurrent Energy, in its comments on the Draft Resolution (which they shared with LSA and we will not repeat here), clearly lays out how easily the proposed caps can be exceeded due to changes that are common during the interconnection process.[8] With costs of relatively minor changes costing more than double the cost cap, it is easy to see how the proposed threshold would put most RAM projects at risk of termination and that as proposed, they are not commercially reasonable.

In addition, the cost caps are much more stringent that those used by the utilities and the CAISO. Both CAISO and PG&E use a plus or minus 20 percent estimate while SCE's cost estimates are "good faith order of magnitude estimates".[9] LSA does not believe it is reasonable for the Commission to adopt a threshold for sellers that is dramatically more stringent than that used by the utilities. Given that the seller has very little control in this situation, the Commission should allow the seller at least as much flexibility as the utilities and CAISO are afforded in the cost cap. LSA recommends that the cost cap be increased to the greater of $250,000 or 25% and that the Unilateral Termination Right be amended to specify that the cost increase limitation apply only to costs directly assigned to a project.

**c. The termination right must include a reasonable opportunity for sellers to review and if necessary correct or challenge increased costs.**

The first and most common sense way to protect ratepayers from excessive costs, it is to allow sellers sufficient opportunity to review the study assumptions used by CAISO or the Participating Transmission Owner (PTO) and ensure that any increase in costs is based on accurate information and assumptions. This occurs during the Results Meeting, which occurs within 30 days after study results are released to the seller. Following this meeting changes are often incorporated.

The current proposal does not allow time for the seller to review assumptions, correct errors, meet with responsible entities, or receive a binding resolution of any dispute. LSA recommends a more prudent and commercially reasonable process that conforms to the dispute resolution procedures incorporated in the CAISO's and the utilities' interconnection procedures. The interconnection customer (the seller) would be afforded the informal and formal resolution

[7] Resolutions E-44□4 and E-4489, *supra* notes 4 and 5.
[8] Recurrent Energy's Comments on Draft Res olution E-4546, Changes to the Renewable Auction Mechanism, p 3 -4 (October 22, 2□□2).
[9] CAISO Tariff, Appendix Y, Section 7.□.

mechanisms, including utilization of third-party arbitration where applicable prior to a final determination, which at that point would trigger the seller's buy-down right.

**d. The proposed buy down needs to be firm.**

LSA is pleased that the Unilateral Termination Right now includes a buy-down option. However, LSA is concerned that as proposed, the buy-down option does not appear to be firm, as it leaves open termination based on changes made to an interconnection agreement by FERC, CAISO or any Transmission provider, which would precludes seller compliance with the buy down terms.[10] This is problematic for the seller during financing and calls into question the reasonableness of the overall termination right.

**2. Resource Adequacy Damages clause has technical and factual errors as it fails to properly assign risk.**

LSA is also concerned about the Resource Adequacy damages clause proposed in the Draft Resolution. While LSA appreciates the Commission's acknowledgement that costs assigned to developers should be actual costs incurred by the utility, rather than fixed liquidated damages regardless of impact to the utility, LSA believes that the Energy Division has made a technical error as the clause fails to properly assign risk and in doing so renders projects unfinanceable because it exposes sellers to uncertain cost and duration changes that have the potential to render the project uneconomic. As with standard energy-only interconnection study results, the cost and timing estimates provided by the PTO/CAISO for deliverability upgrades are nonbinding and subject to change up to the point of final construction of the interconnection facilities. For instance, if a few generators fall out of the deliverability queue, estimated costs of deliverability upgrades may increase significantly and potentially push out the expected timing of the upgrades. Neither of these changes is the fault of the seller, and as such, the seller should not be held responsible for changes to cost or timing estimates that occur after Interconnection Agreement is executed. In addition, with the advent of discrete Time of Deliveries for Energy Only and Full Capacity Deliverability Status ("FCDS"), sellers have incentive to achieve the designation at the earliest possible time. LSA recommends that this section should be corrected to indicate that seller is responsible for costs associated with the failure to achieve FCDS that are directly the fault of the seller.

**3. Conclusion**

LSA recommends the Commission reject the Draft Resolution's approval of both the Unilateral Termination Right Resource and the Resource Adequacy Damages clause as proposed, as both clauses contain serious flaws that have the potential to derail the RAM Program. Should the Commission determine that it is necessary to adopt these changes at this time, we urge the Commission to incorporate the changes indicated above. However, LSA recommends that that further evidence and stakeholder input be solicited in order to ensure that the Unilateral

[10] See Recurrent Energy's Comments on Draft Resolution E -4546, Changes to the Renewable Auction Mechanism (October 22, 2□□2); p.5 and 'Transmission Provider' definition in Exhibit A (p. 3□, p. □44) to the proposed PPA attached to SCE AL 2579 -E.

Termination Right is supported by sufficient evidence and both clauses are commercially reasonable and properly allocate risk prior to adoption.

Respectfully submitted,

/s/ Rachel Gold

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