

October 22, 2012

VIA E-MAIL

Paul Douglas
California Public Utilities Commission
Tariff Files, Room 4005
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Draft Resolution E-4546: Changes to the Renewable Auction Mechanism for Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company

Dear Mr. Douglas:

In this letter, the Solar Energy Industries Association (SEIA)¹ provides comments on the Draft Resolution E-4546 (Draft Resolution) circulated on October 2, 2012. The Draft Resolution addresses Pacific Gas and Electric Company's (PG&E) Advice Letter 4100-E, Southern California Edison Company's (SCE) Advice Letter 2392-E and San Diego Gas and Electric Company's (SDG&E) Advice Letter 2392-E all of which pertain to the Commission's Renewable Auction Mechanism (RAM) Program.

I. INTRODUCTION

In adopting the RAM, the Commission recognized that once the program was implemented experience may warrant modifications. In so recognizing, the Commission established a standard for future modifications to the RAM program -- "Any modifications proposed should be based on evidence that the modification is necessary to improve the RAM program."² This standard was later reiterated in subsequent Commission Resolutions effecting changes to the RAM Program.³ Indeed, the Draft Resolution acknowledges that such is 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 Decision 10-12-048 at p. 4.

³ See Resolution n E-4414 at p. 2 (affirming that the RAM Decision "delegates to staff the ability to modify the Decision through a CPUC-approved resolution based on evidence that the

appropriate standard, stating that the Energy Division evaluated the “necessity” of the changes to the RAM program advanced by the IOUs “based on the following criteria”:

- Consistency with Decision 10-12-048, as modified by Resolution E-4414 and Resolution E-4489; and
- Evidence that these changes will improve the RAM program.

As illustrated below, the Draft Resolution does not, in fact, assess certain aspects of the approved changes based on the stated criteria. To the contrary, the Draft Resolution would make changes to the RAM program in the absence of any showing of need or evidence that the change will improve the program. Given the lack of adequate rationale and for the additional reasons provided, SEIA respectfully requests that the Draft Resolution be revised to (2) eliminate (or, at minimum, modify) the IOU’s unilateral termination right based on transmission upgrade costs; (2) modify the IOU’s right to collect damages from the Seller for failure to meet its RA obligations; and (3) allow for the participation of projects between 1 and 3 MW in the third RAM solicitation.

II. COMMENTS

A. Unilateral Termination Right

Through Advice Letter 2392-E, SCE sought the authority to terminate a RAM PPA if the reimbursable transmission network upgrade costs for a project increase over the estimate provided at the time of the RAM bid selection by more than the lesser of (1) \$100,000 or (b) 25%. SEIA (and others) protested such provision as being inconsistent with the above stated standard for modifications to the RAM Program -- *i.e.*, that the modification is necessary to improve the program -- as SCE had failed to demonstrate that excessive increases in upgrade costs are an existing problem that needs to be addressed. Despite agreeing with the protesters that SCE had not demonstrated any instances where ratepayers have been exposed to excess increases in transmission upgrade costs, the Draft Resolution proceeds to approve SCE’s proposed termination right. In other words, although SCE produced no evidence that a problem actually exists or is imminent in the RAM Program, or that the proposed termination provision is necessary to improve RAM Program, the Draft Resolution, in direct contravention of Decision 10-12-048 and inapposite to the criteria purportedly used to evaluate the IOUs’ proposed changes to the RAM program, would approve the requested modification anyway. Given this fundamental disregard for previously established Commission directives, SEIA continues to urge the Commission to deny SCE’s request for a unilateral right of termination.

That said, SEIA recognizes that the concern expressed in the Draft Resolution -- the potential for unbounded ratepayer exposure to increased transmission costs-- is a credible concern. In other words, if such costs were to occur with ratepayers picking up the bill, then it could be a severe deterrent to the continuation of the RAM Program. The Commission,

modification is necessary to improve the RAM program); and Resolution E- 4489 at p.3 (providing that the “The purpose of this resolution is to adopt programmatic changes to RAM based on evidence provided by the IOUs that these modifications are necessary to improve the program).

however, must be careful to balance the interests of the ratepayers against the imposition of a unilateral termination provision which could cripple the RAM Program. In short, should the Commission proceed to adopt a unilateral termination provision as part of the RAM program, it must be modified in a manner which adequately balances the Commission's competing interests of ratepayer protection and the advancement of renewable energy. In this regard, SEIA offers the following recommended changes.

1. The Open Ended Nature of the Right Must be Modified

Currently, the Draft Resolution does not specify the development stage at which estimated network upgrade cost increases could trigger termination, or any project milestone after which such a right would expire. Rather the Draft Resolution provides:

Additionally, the investor-owned utility must notify the Seller *within 30 days of the availability of new transmission study results* of its intention to terminate the RAM PPA.

This language provides the IOU an open ended termination right as it links the termination right to *any* transmission study results, not simply the study tied to a particular generator's interconnection request. Thus, for example, five years after the project is built, the utility could determine that some additional network upgrade is necessary and allocate a portion of that cost to the developer. Based on the language of the Draft Resolution, this could result in the project being terminated. This leaves developers in an untenable situation. Such an open ended termination right will render it difficult, if not impossible, for the developer to obtain financing for the project as the financing entity will not want to take on the risk that the project will be terminated through no fault of the developer. Absent the ability of developers to obtain financing, the RAM Program is jeopardized.

Accordingly, it is critical that any termination right linked to transmission upgrade cost increases expire at a time coincident to the stage in project development when the developer seeks financing. This typically occurs several years into the project, following the transmission or distribution interconnection study process and execution of an interconnection agreement with the utility. Thus, SEIA recommends that if the Commission move forward with the inclusion of a termination right linked to transmission upgrade costs as part of the RAM PPA, then such right expire upon the developer's execution of an interconnection agreement.

2. Cost Caps which Trigger Termination Right must be Modified

The Draft Resolution would afford the IOU the right to terminate if the reimbursable transmission network upgrade costs for a project increase over the estimate provided at the time of the RAM bid selection by more than the *lesser of* (1) \$100,000 or (b) 25%. These cost caps are arbitrary, having been determined without relevant evidence and virtually without stakeholder input. As illustrated in comments submitted by Recurrent Energy on the Draft Resolution, using typical interconnection costs for projects in RAM 1 and 2, in practice the actual cost cap would virtually always be \$100,000, which could represent a total cost overrun of as little as *2% or less* of the estimated upgrade cost. The IOUs should not be afforded the opportunity to terminate a PPA as a result of a 2% cost overrun. If the Commission determines

to proceed with the imposition of a termination right tied to increases in transmission network upgrade costs, then the dollar amounts which would trigger such right should more realistically reflect the true costs of network upgrades.

B. Damages for Failure to Meet RA Obligations

Through its Advice Filing, SCE proposed that a Seller be required to pay fixed liquidated damages if the Seller failed to meeting monthly RA obligations as defined in its RAM PPA. The Draft Resolution approves SCE's proposal, changing, however, the request for liquidated damages to actual damages. In so doing, the Draft Resolution states that "it is reasonable for a utility to expect a Seller to meet its contractual obligations pursuant to the RAM PPA."⁴ While SEIA appreciates the fact that the Draft Resolution correctly recognizes that Decision 10-12-048 does not allow for the IOUs to seek liquidated damages, the Draft Resolution fails to account for the fact, as brought forward in the protest of Silverado Power LLC to SCE's Advice Filing, that a Seller's ability to reach full capacity deliverability status and thus meets it RA obligations is controlled by the IOU.⁵ As pointed out by Silverado Power, provided that the Seller is making commercially reasonable efforts to bring about the necessary network upgrades, failure to reach full capacity deliverability status would only occur in two instances: either the transmission provider (the IOU) provided an inaccurate study or the utility failed to build the necessary deliverability network upgrades within the timeframe previously identified as reasonable.⁶ In either case, so long as the Seller is making commercially reasonable efforts to achieve FCDS, then the developer has no control over delays and should not be required to pay damages to the IOU based on those delays. Accordingly, the Draft Resolution should be modified so that the IOU can only seek damages from a Seller for failure to meet its RA obligation when such failure is directly tied to an act of the Seller

C. Limitation of RAM Program to Projects Over 3 MW

The changes to the RAM Program affected by this Draft Resolution will be implemented in the context of the third RAM solicitation, to close by December 21, 2012. As noted in the Draft Resolution (at p. 24), while the RAM Program had been approved for projects between 1 and 20 MW, the Commission, in D.12-05-035 approving the SB 32 Feed-in-Tariff program for projects up to 3 MW, prohibited the participation of projects sized 3 MW and less in the RAM Program. This prohibition was premised on the concern regarding the "overlap of the two renewable programs and the potential for gaming of the price of the two programs for projects of 3 MW and under."⁷ Currently, however, there is no overlap. The SB 32 Feed-in-Tariff Program has not been implemented and recent pronouncements from the Commission indicate that it will

⁴ Draft Resolution at p. 17

⁵ Silverado Power LLC's Protest to Southern California Edison Company's Advice Letter 2759-E regarding Request for Modifications to SCE's Renewable Auction Mechanism ("RAM") Program Pursuant to Decision 10-12-048 (August 1, 2012) at p. 4.

⁶ *Id.*

⁷ See Decision 12-05-035 at p. 68.

not be implemented until the first quarter of 2013 at the earliest.⁸ As a result, instead of overlapping renewable programs for projects less than 3 MW, there are no programs in which such projects can currently participate. Such result is counterintuitive and not consistent with the Commission's intent and there is clearly no evidence that such a result will improve the RAM program. Accordingly, for the purposes of the third RAM solicitation, the Commission should direct the IOUs to allow projects between 1 and 3 MW to participate.

III. CONCLUSION

The RAM Program has been a successful procurement program, drawing significant interest from developers. The Commission should not impede participation by implementing provisions which render it difficult for developer's to receive adequate project financing or by unnecessarily restricting certain sized projects from participating in the third RAM solicitation. Accordingly, prior to adopting the Draft Resolution the Commission should make the modifications requested herein.

Very truly yours,

GOODIN, MACBRIDE, SQUERI,
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Service List, R.11-05-005

3326/003/X145312.v1

⁸ Amended Scoping Memo and Assigned Commissioner's Ruling, R. 11-05-005 (September 12, 2012) at p. 11.

CERTIFICATE OF SERVICE

I certify that I have by e-mail this day served a true copy of Comments on Draft Resolution E-4546:

An original and 2 copies, with a certificate of service by Hand Delivery:

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Service List, R.11-05-005

Dated October 22, 2012 at San Francisco, California.



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