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)

REPLY COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON PROPOSED DECISION ACCEPTING RPS PROCUREMENT PLANS

INDEPENDENT ENERGY PRODUCERS ASSOCIATION
Steven Kelly, Policy Director
1215 K Street, Suite 900
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
Email: steven@iepa.com

GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers Association

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In its comments on the *Proposed Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement,* issued by Administrative Law Judge Regina DeAngelis on October 9, 2012 (PD), the Division of Ratepayer Advocates (DRA) supports the PD's proposal to give utilities a unilateral right to terminate a Power Purchase Agreement (PPA) if transmission network upgrade costs exceed a figure previously agreed on by the buyer and seller. In addition, DRA urges the Commission to "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."[1]

The Independent Energy Producers Association (IEP) replies to the PD's and DRA's simplistic approach to a complex issue. The policy proposed in the PD and advocated by DRA is harmful to renewable energy developers and ratepayers, and DRA's statement highlights several of the problems with the PD's proposal.

The PD requires a supplier to have completed a Phase 2 Study, part of the Generator Interconnection Process of the California Independent System Operator (CAISO),

[1] DRA's Opening Comments, p. 4.

before executing a contract with the utility. The completed Phase 2 Study will include the best available information on the cost of reliably interconnecting the generator to the electric grid. Furthermore, completing the Phase 2 Study is a precondition to executing a Generator Interconnection Agreement (GIA) between the generator, the Participating Transmission Owner (PTO), and the CAISO. The GIA, among other things, allocates the anticipated cost of network upgrades among the parties. Accordingly, the Phase 2 Study's estimated cost of transmission upgrades, based on the most up-to-date cost information, properly should serve as the agreed-on cap for purposes of cost allocation associated with the interconnection of the generator. In the PPA, the utility will have no reason to agree to a higher cap, and the seller will have no reason to agree to a lower cap.

DRA's quoted comment goes to the related question of who pays for excess costs if the costs of network upgrades exceed the cap specified in the Phase 2 Study and the associated GIA. DRA's quick answer is "Not ratepayers," but this answer will hinder achievement of the Renewable Portfolio Standard (RPS) goals, will increase the costs of RPS compliance and consequently harm ratepayers, and will undermine needed investment in clean resources in California. In response to DRA's proposal, IEP provides the following observations.

First, because the generator, the PTO (which is often the utility purchasing the renewable energy), and the CAISO will have agreed to an allocation of costs in the executed GIA, imposing the risk of additional costs or contract termination on the generator, *after* the execution of the GIA, is an unnecessary and unwarranted requirement that exposes the generator to something analogous to double jeopardy.

Second, as a general rule, large-scale merchant renewable generation, interconnected at the transmission level, is not financeable in California at this time. A long-

term PPA is a prerequisite for financing and for construction. Thus, assuming the principle of cost-causation applies, the "cause" of the development of renewable energy projects, and the associated transmission upgrades needed to interconnect those projects to the electric grid, is the utilities' need to comply with their RPS obligations and the utilities' procurement of renewable energy on behalf of their customers. Furthermore, the Commission-approved Least-Cost/Best-Fit (LCBF) bid evaluation methodology, which the utilities use to select renewable projects, already includes consideration of interconnection and transmission upgrade costs in the selection algorithm. Thus, the utilities should be selecting the projects with the lowest risk of cost overruns for network upgrades.

Third, generators, the party most harmed under DRA's approach, have no involvement in the construction of the network upgrades (except for providing the initial financing specified in an executed GIA). Generators have little if any ability to influence the costs of transmission construction, including any cost overruns, undertaken by the PTO. Under DRA's and the PD's proposal, developers could find that their PPA is at risk of being terminated unless they buy down network upgrade costs above the cap, costs that the seller has no ability to control.

Finally, to the extent that the generator will continue to bear an unknown and unknowable risk associated with costs for interconnection above and beyond those agreed to in the executed GIA or, alternatively, bear the risk of contract termination, two outcomes are likely: (1) the developer will delay generation construction until all transmission costs are known, conceivably until after the interconnection facilities are fully built, which means that RPS compliance likely will be delayed; or (2) the cost of achieving the RPS policy goals (as well as greenhouse gas emission reduction goals) will increase to cover the risk that the generator will be

allocated these costs (or else face contract termination). Naturally, in the face of this uncertainty, the private capital necessary to construct the resources to meet the RPS goals will flow elsewhere. DRA's proposal has the dual effect of unnecessarily raising the cost of meeting RPS goals while creating the conditions the encourage more speculative projects.

In short, the question of how excess network upgrade costs will be allocated and recovered deserves more consideration and examination than DRA's glib formulation suggests. IEP, therefore, respectfully urges the Commission to reject DRA's request for a "clarification" that ratepayers are automatically exempt from any responsibility for excess costs of network upgrades; there may be circumstances when the Commission will conclude that it is ratepayers' best interests to bear the excess costs of network upgrades. In addition, the PD should be modified to eliminate the proposed termination provision. This provision simply imposes unwarranted, costly, and ultimately unnecessary risks on developers selected by utilities to build resources on behalf of California consumers. Instead, the executed GIA should determine the developer's cost responsibility for interconnecting its generation to the electric grid.

Respectfully submitted this 5th day of November, 2012 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

By */s/ Brian T. Cragg*
Brian T. Cragg

Attorneys for the Independent Energy Producers Association

VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Reply Comments of the Independent Energy Producers Association on Proposed Decision Accepting RPS Procurement Plans," dated November 5, 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 is true and correct.

Executed on this 5th day of November, 2012, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg

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