

**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)

**RESPONSE OF THE LARGE-SCALE SOLAR ASSOCIATION TO THE
APPLICATION OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION FOR REHEARING OF D. 12-11-016**

In accordance with the California Public Utilities Commission's ("Commission") Rule of Practice and Procedure 16.1(d), The Large-scale Solar Association ("LSA") provides the following response to the Independent Energy Producers Association's ("IEP") Application for Rehearing of D. 12-11-016 (the "Decision") Conditionally Accepting the 2012 RPS Procurement Plans.

Introduction

LSA agrees with IEP that the Commission's requirement in the Decision that the utilities include a transmission upgrade cost cap in their pro formas constitutes a legal error.¹ IEP contends that the Decision is flawed for multiple reasons including: 1) it constitutes an irrational assignment of risk; 2) it does not limit the duration of the seller's risk; 3) it provides no remedy for errors; 4) it is not supported by substantial evidence; and 5) it is arbitrary, capricious and discriminatory to adopt a transmission upgrade cost

¹ Application of the Independent Energy Producers Association for Rehearing on Decision 12-11-016 (December 14, 2012), p.2.

cap for the RPS and not the RAM. LSA agrees with these contentions and in this response highlights two troubling aspects of the Commission's Decision.

1. The Decision improperly assigns risk.

First, LSA is concerned that the Decision does not properly assign risk. LSA has become increasingly concerned with the imbalanced and irrational approach taken by the Commission on the transmission upgrade cost cap, in light of growing concerns with the accuracy of results from the CAISO study process and the increased risk that has been allocated to sellers, tied to those results. LSA recognizes the importance of addressing the issue of potential excessive Network Upgrade (NU) costs, however, the logical solution to this problem is not to place the entire burden on the party least able to control the costs of NUs. The Decision fails to substantiate why allocating all the risk for excessive NU costs is a rational or appropriate solution to the problem. Nor does the Decision discuss or account for how the risk allocation change will impact sellers, how this change may impact the costs estimates of PTOs or what impacts this change may ultimately have on the RPS program. Moreover, LSA agrees with IEP's contention that the transmission upgrade cost cap will likely result in sellers increasing PPA prices to cover the risk that the NUs may exceed the agreed upon cost cap, thereby increasing costs to ratepayers.² It is irrational, arbitrary and capricious for the Commission to shift the risk of increased NU costs solely onto the seller without consideration of the impacts on all parties or substantial evidence that the adoption of the transmission upgrade cost cap will have the desired impact of protecting ratepayers from excessive NU costs.

² Id at p. 7.

2. The Decision fails to include any safeguards for sellers.

Second, the adoption of the transmission upgrade cost cap does not include any safeguards for the seller. The Decision fails to include a remedy for errors in or revisions to study results or a time limit for the termination right. As noted by IEP, sellers have little ability to control these costs and yet the Commission does not ensure that seller's existing rights to correct errors or request revisions to study results are accounted for in its Decision.³ The Commission should not allow a termination right or buy-down provision to be premised on a flawed or inaccurate study results nor should its decisions undermine seller's existing rights to correct or appeal those results under the CAISO Tariff.⁴

Furthermore, LSA is concerned that the Decision does not limit the duration of the termination right. The Commission's allowance for an open-ended termination right burdens sellers with undue uncertainty and undermines renewable project financing by allowing fully financed projects to be subject to termination for reasons outside their control, which makes it difficult for projects to qualify for traditional financing options. LSA agrees with IEP that the reasonable solution to this problem is to limit the termination right to studies issued prior to the execution of an Interconnection Agreement.⁵ The Commission's failure to discuss or include any safeguards for sellers in the Decision, including either of the rational and reasonable limits on the transmission upgrade cost cap noted above, is arbitrary and capricious.

³ Id at p. 4.

⁴ See CAISO Tariff, Appendix Y, Section 7.1.

⁵ IEP's Application for Rehearing at p. 5.

Conclusion

LSA urges the Commission to grant IEP's Application for Rehearing of D. 12-11-016 and undertake careful consideration of the impacts a transmission upgrade cost cap will have on all parties involved, realign the incentives in a manner that reasonably limits the risks to sellers and support the limited mechanisms available to sellers to control NU costs.

Dated: December 31, 2012

Respectfully Submitted,

/s/ Rachel Gold

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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 *Response of the Large-scale Solar Association to the Application of the Independent Energy Producers Motion for Rehearing of D. 12-11-016* 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 December 31, 2012 at Berkeley, California.

/s/ Rachel Gold

Rachel Gold
Policy Director, Large-scale Solar
Association