BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of the 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 CITY OF SAN DIEGO ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE REGINA DEANGELIS AND THE ALTERNATE PROPOSED DECISION OF COMMISSIONER MARK FERRON

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Date: April 15, 2013

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I. Introduction

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure and the e-mailed instructions from Administrative Law Judge (ALJ) Regina DeAngelis on April 10, 2013, the City of San Diego (City) submits these reply comments on the Proposed Decision (PD) of ALJ DeAngelis and the Alternate Proposed Decision (APD) of Commissioner Mark Ferron.

The City generally supports the opening comments filed by the Clean Coalition, Placer County Air Pollution Control District (PCAPCD), Bioenergy Association of California (BAC), Sierra Club, Waste Management, Henwood Associates, and Green Power Institute, which address the unjust and unreasonable burdens placed on developers of Feed-in Tariff (FiT) projects by certain provisions of the proposed standard contract. The City is concerned that some of the recommendations made in opening comments by

Pacific Gas & Electric (PG&E), Southern California Edison (SCE), San Diego Gas & Electric (SDG&E) would add to these unreasonable burdens and further discourage participation in the program, thereby thwarting the public policy goals the FiT program is intended to achieve.

II. The PD and APD Correctly Conclude that Section 6.14 of the Draft Standard Contract Concerning Modifications to Facility Places an Unreasonable Burden on Sellers and the Opening Comments of the IOUs Have Failed to Demonstrate an Overriding Interest that Would Warrant Buyer Consent to Modifications

The City notes that all of the contract terms and performance requirements that the IOUs would seek to enforce through the consent rights provided in Section 6.14 of the draft standard contract, such as Contract Capacity, Type of Facility, Interconnection Point and Metering Requirements, originate in sections other than Section 6.14. Therefore, none of those contract provisions, nor the IOUs' ability to enforce those provisions, is affected by striking Section 6.14 the PD and APD.

PG&E claims that in "[r]emoving any limitation of the Seller's ability to modify the facility, the Seller has a 'put option' to install new or additional generating equipment in the future to deliver incremental energy to PG&E at prices PG&E contracted for in the past…."[1] The City notes that by simply declining to include a requirement that the seller obtain prior consent to modify its facility, the PD and APD have done nothing to lessen,

[1] PG&E April 8, 2013 Opening Comments at p. 10.

let alone "remove" any limitation on modifications to the seller's facility that may be derived from other provisions of the contract or other laws or requirements.

SCE cites its "… obligation under D.10-06-004 to actively monitor seller's compliance with certain contract terms" and states "as part of its active monitoring efforts, SCE visits the sites of generating facilities to verify that the generating facility is, in fact, built and operating as described in the applicable contract." SCE then claims that this obligation to monitor contract compliance and SCE's efforts to do so mean that "SCE needs to be aware of all modifications to a generating facility and have the ability to prevent modifications that would conflict with the terms of the contract and/or prejudice SCE or its customers."[2] It does not logically follow that sellers must obtain buyer consent to modifications to the facility in order for the buyer to monitor contract compliance. SCE and the other utilities can, and will, monitor contract compliance, including as SCE describes, making site visits, regardless of whether there is a consent requirement for facility modifications.

SDG&E claims that certain modifications without the IOU's consent "… could impose significant additional cost on ratepayers, render the project ineligible for ReMAT and/or create administrative burden" and that it is therefore necessary to require IOU consent for these modifications "… in order to protect ratepayers."[3] Since all of the contract provisions that determine the costs incurred by ratepayers and that determine the project's eligibility for Re-MAT are retained in the standard contract and may be enforced without

[2] SCE April 8, 2013 Opening Comments at p. 13.
[3] SDG&E April 8, 2013 Opening Comments at p. 10-11.

referring to Section 6.14, it is not necessary to require sellers to obtain buyer consent before making modifications to its facility in order to protect ratepayers. There may be greater administrative burden on the IOU if it needs to respond to a contract violation that results from a seller modification to its facility. However, the ALJ and assigned commissioner have weighed the potential burden on sellers against the benefits, if any, of the including the consent requirement and have correctly determined that on balance the FiT program is best served by not requiring buyer consent to facility modifications. Neither the PD nor the APD should be modified to reintroduce Section 6.14 in any form.

The modified versions of Section 6.14 offered by SCE and SDG&E would introduce the opportunity for buyers to exert rights to limit seller activities not granted elsewhere in the agreement.[4] Specifically, to the extent that both the SCE and SDG&E proposed versions of Section 6.14 would require consent when the seller seeks to make modifications that would change the expected output of the "Facility," there is the possibility that the buyer may assert its rights under Section 6.14 to prevent the seller from making lawful modifications or additions to its facility to produce energy for on-site use or to facilitate energy sales outside of the particular FiT contract, as allowed by CA PUC Section 218(b)-(e), in a way that would not cause the seller to violate any of the terms of the FiT contract. The PD and APD are correct in excluding this provision on the basis that it imposes an unreasonably vague burden on the seller. The City would add that the provision, even as modified in the comments of SCE or SDG&E, would also establish

[4] SCE April 8, 2013 Opening Comments at p. 14 and SDG&E April 8, 2013 Opening Comments Attachment A.

unreasonably vague rights for the buyer, potentially allowing it to meddle in activities of the seller that are beyond the purview of the contract for a particular facility.

III. Conclusion

The City is pleased that there will soon be a new FiT ReMAT program and associated standard contract, and is generally supportive of the proposed standard contract. We appreciate all of the hard work by the Commission and parties over the past few years to get to this point. While the City would prefer to see more simplified and less onerous contracts for certain project types, such as smaller projects and those offering excess sales, we understand that this is a one-size-fits-all type of contract that it unlikely to please all parties in all situations. That said, there are certain "deal-breaker" issues, such as those addressed in the City's opening comments regarding Contract Quantity and Guaranteed Energy Production for some sellers offering excess sales, that if not addressed may significantly affect participation in and success of the FiT program for certain product types (such as excess energy) that are required to be included in this program.

The ALJ and assigned commissioner identified another deal-breaker issue in the proposed Section 6.14 concerning buyer consent for facility modifications, and the PD and APD correctly declined to adopt this section. The Commission should resist the attempts by the IOUs to reintroduce this section in its original or modified form, since it is not necessary for the IOUs to enforce the contracts and there is no compelling benefit to offset the unreasonable burden on sellers that this requirement would impose. The

Commission should adopt the PD or APD without changing the Ordering Paragraph regarding Section 6.14.

Dated: April 15, 2013

Respectfully submitted,

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By: _____/s/_____

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VERIFICATION

I am a Deputy City Attorney for the City of San Diego and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of April, 2013, at San Diego, California.

Frederick M. Ortlieb

/s/

City of San Diego