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)

OPENING COMMENTS OF THE UTILITY REFORM NETWORK ON RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS

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July 12, 2013

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Pursuant to the May 10, 2013 Assigned Commissioner's Ruling Identifying Issues and Schedule of Review for 2013 Renewables Portfolio Standard Procurement Plans pursuant to Public Utilities Code §399.11 et seq. and Requesting Comments on A New Proposal (ACR), The Utility Reform Network (TURN) respectfully submits these opening comments on the Renewables Portfolio Standard (RPS) plans of Pacific Gas and Electric (PG&E), Southern California Edison (SCE), San Diego Gas & Electric (SCE), and the Electric Service Providers (ESPs).

I. A TWO-YEAR PROCUREMENT PLANNING CYCLE IS REASONABLE

TURN generally supports the proposal for a two-year procurement plan as described in ACR. Given the multi-year compliance periods under SBx2, there is no compelling need to conduct a rigorous stand-alone procurement planning process every year. Reliance on two-year plans with annual supplements and updates should be sufficient to allow the Commission to oversee the basic procurement activities, policies and strategies. TURN hopes that such an approach would allow parties to identify issues that arise prior to the second year of the cycle in sufficient time to allow the Commission to issue mid-cycle corrections as warranted.

II. THE COMMISSION SHOULD DIRECT PG&E TO PRIORITIZE PROCUREMENT OF NEW RENEWABLE GENERATION THAT WILL COME ONLINE IN TIME TO UTILIZE EXISTING TAX INCENTIVES

PG&E proposes to conduct renewable procurement using a preference for new resources "with contract start dates in 2020 or later."[1] This preference is likely to

[1] PG&E RPS plan, page 19.

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manifest itself in PG&E either declining to consider offers with earlier contract start dates or using quantitative measures to severely disfavor such offers as part of a Least-Cost Best-Fit (LCBF) process. This "preference" is unwise in light of the expected sunset of the 30% Investment Tax Credit (ITC) on December 31, 2016 and the requirement that an eligible wind project must commence development by the end of 2013 to receive the Production Tax Credit (PTC).[2]

PG&E should be strongly encouraged to contract for resources with online dates prior to the expected ITC and PTC sunset dates.[3] These tax credits represent major financing assumptions that are essential to contract pricing and provide significant benefits to California ratepayers in the form of lower renewable energy costs. SDG&E explains that these credits "represent about 33% of the economic value of renewable projects and without them, the relative competitiveness of renewable energy relative to fossil fuels, will be severely impacted."[4] PG&E's plan notes that the expiration of these credits may lead to "higher prices for incremental RPS procurement".[5]

History demonstrates that any project eligible for these credits relies on their continued availability when negotiating pricing and contract terms. Projects will not receive financing and proceed with active development if the initial online date is projected to extend past the current statutory ITC/PTC sunset. This pattern was observed during the 2002-2009 period when short-term PTC extensions contributed

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[2] Under current law, the ITC will be reduced from 30% to 10% for any eligible project achieving commercial operation after December 31, 2016. In order to receive the PTC, a project must commence construction by December 31, 2013 which can be satisfied by a showing that the developer has incurred five percent of the total project cost and subsequently makes continuous progress towards completion.

[3] TURN does not have any problem with PG&E contracting to procure from a facility post-2016 if it anticipates achieving initial commercial operations prior to the ITC sunset. In other words, PG&E could contract for years 5-25 of a facility's output if the developer can find another buyer to take the first 5 years of generation.

[4] SDG&E RPS plan, page 20.

[5] PG&E RPS plan, page 74.

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to a freeze in the development of any wind project lacking both a long-term contract and a virtual guarantee of beating the then-current sunset date.

PG&E's own filing highlights the fact that new projects with online dates after the ITC/PTC sunset dates are far more prone to delay and cancelation.[6] Moreover, PG&E acknowledges that the current tax credits combined with abundant supply are driving "relatively low project pricing in the near term."[7] This favorable environment, according to PG&E, is jeopardized by the expiration of tax credits which "will create more price uncertainty for projects that will be commissioned in 2017 and beyond."[8] It is for these exact reasons that SCE proposes to solicit projects with commercial operation dates of January 1, 2016 or later.[9] SCE's approach reduces the likelihood that projects will be exposed to ITC risk and thereby maximizes the benefits of the credits for ratepayers. By contrast, PG&E explains that its procurement plan "focuses on projects with energy deliveries to PG&E commencing after the PTC and ITC expire."[10]

Despite a lack of any supporting evidence, PG&E asserts that developers with later online dates will be able manage the risk of lost tax credits by being "committed and able to fulfill contractual requirements without the guarantee of tax subsidies."[11] TURN cannot fathom how PG&E could offer such an assessment given that the PPA price always includes an assumption that these extremely generous tax benefits remain available. In the event that the tax benefits sunset prior to the expected commercial operation date, developers will either seek to renegotiate the PPA pricing (which is highly disfavored by this Commission) or cancel the project. Regardless of

[6] PG&E RPS plan, page 18.
[7] PG&E RPS plan, page 32.
[8] PG&E RPS plan, page 32.
[9] SCE RPS plan, page 8.
[10] PG&E RPS plan, page 45.
[11] PG&E RPS plan, page 51.

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the level of "commitment", no developer will proceed with (or receive financing for) a project that is guaranteed to lose money.

PG&E's strategy seems likely to yield PPAs with distant online dates that will invite speculative bids from sellers seeking to acquire 'put' options at unrealistic price points. Bids will assume the full availability of tax credits along with optimistic assumptions regarding future declines in cost. Since commercial online dates may be many years in the future, developers will wait and only perform on these agreements if their optimistic assumptions come to pass over time. Some may acquire contracts for the sole purpose of selling the right to build the project to another developer. TURN expects relatively high failure rates for such contracts. Indeed, PG&E admits that "long-term projects with start dates six years or later from their solicitation year may be more susceptible to development delay or failure."[12]

TURN recognizes that PG&E does not have significant near-term renewable resource need and would prefer that new portfolio additions occur in the post-2020 timeframe. Any procurement focused on this timeframe should be accompanied by obligations for developers to bring their projects online in 2016 (or earlier in the case of wind) even if PG&E does not have a contractual obligation to purchase the energy until a later date. PG&E's plan refers to the possibility that developers will build projects earlier than the contract start date and sell their output to the market or third parties.[13] But since PG&E does not propose to require earlier online dates as part of its contract protocols, there is no guarantee that developers will pursue this strategy.

If PG&E wants to defer new portfolio additions until 2020, it should be directed to require that counterparties bring resources online by an earlier date. Under this approach, counterparties would be required to begin project development in the

[12] PG&E RPS plan, page 72.
[13] PG&E RPS plan, page 98.

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near-term, meet early milestones and achieve commercial operation prior to the expiration of the ITC or PTC. If developers cannot, or will not, move ahead with permitting, financing and construction in a reasonable timeframe, PG&E should terminate the contract as nonperforming. Otherwise, PG&E will be left with a portfolio of risky contracts with a higher risk of nonperformance.

If PG&E insists upon its stated approach, the Commission should hold PG&E accountable for excessive project defaults and/or unreasonably high project pricing that results from this strategy. To the extent that PG&E's approach jeopardizes compliance or ultimately proves detrimental to the interests of ratepayers, the Commission should place the blame (and the financial consequences) squarely on PG&E.

III. ANY RENEWABLE INTEGRATION COST ADDERS SHOULD BE BASED ON THE RESULTS OF THE MODELING EFFORTS OCCURRING IN THE LONG-TERM PROCUREMENT PLAN PROCEEDING

Both SCE and PG&E urge the Commission to approve integration cost adders as soon as possible for use in their upcoming RPS solicitations. PG&E seeks authority to use an adder "immediately" while SCE requests that the IOUs be permitted to submit proposals for review and approval in time for upcoming solicitations.[14] TURN shares the concerns raised by the IOUs but urges the Commission not to approve any integration cost adders until the results of the ongoing modeling in R.12-03-014 are complete.

TURN has been participating in R.12-03-014 and actively following efforts to model the impact of intermittent renewable resources on system operations. The results to date are not sufficiently robust to justify any particular LCBF adder. Both the CAISO

[14] PG&E RPS plan, page 6; SCE RPS plan, page 35.

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and SCE will be providing testimony on this topic in September. TURN understands that the renewable integration modeling being conducted in R.12-03-014 is meant to forecast long-term system flexibility needs and not necessarily estimate specific renewable integration costs. The Commission should ensure that any adopted RPS renewable integration adders are based on the modeling method adopted for purposes of long-term resource planning. Until the Commission has made a determination regarding the modeling provided in that case, it would be premature to invite the IOUs to propose unrelated renewable integration adders in this rulemaking. The bifurcated approach proposed by SCE and PG&E could lead to divergent outcomes on the same issues of fact in separate proceedings.

The Commission has addressed this issue and repeatedly rejected IOU proposals to adopt *ad hoc* integration adders. [15] Given the fact that the issue is being actively studied in R.12-03-014, there is no reason to authorize a duplicative approach at this time. The most recent relevant Commission decision directed parties to "participate in the CAISO processes on this topic or in Commission proceedings, R.12-03-014 and this proceeding, to provide data and cost information to develop a robust and meaningful integration cost adder."[16] TURN believes that nothing has changed since the issuance of this Decision a mere 8 months ago.

TURN therefore urges the Commission to either designate a phase of R.12-03-014 for this purpose or wait until the integration modeling has been approved and then conduct a phase of this proceeding that utilizes the approved modeling methodology and inputs.

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[15] D.11-04-030, page 23; D.03-06-071, pages 33-34.
[16] D.12-11-016, page 29.

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IV. PG&E HAS NOT JUSTIFIED ITS PREFERANCE FOR CONTRACTS OF 10 TO 15 YEARS IN DURATION

PG&E proposes to give preference to offers with 10 or 15 year delivery terms. This preference would be implemented through a Portfolio Adjusted Value (PAV) calculation that penalizes bids with longer delivery terms.[17] PG&E does not explain why it is reasonable to discriminate against 20 and 25 year contract terms and fails to offer any analysis in support of the benefits of 10 and 15 year terms.

TURN is very concerned that this approach could prove counterproductive to the interest of ratepayers. Developers may charge lower overall prices when new facilities are financed through a longer-term agreement. To the extent that bids offer similar prices for terms ranging from 10 to 25 years, PG&E may be justified in selecting shorter terms. But PG&E proposes a solicitation adder that would be a significant 'thumb on the scale' for 10 to 15 year contracts and could overwhelm any other price savings that could be achieved through longer terms.

As a member of PG&E's Procurement Review Group, TURN reviewed the use of this specific adder in PG&E's recent RPS solicitation and was alarmed by the impact on bid ranking. The adder arbitrarily favored 10 to 15 year contracts and was a practically impossible hurdle for any offer with a 25-year term. TURN is not convinced that the significant impact on bid ranking can be justified by any demonstrable cost faced by PG&E and its customers. TURN therefore urges the Commission to reject PG&E's use of the delivery term adder in its PAV methodology for the 2013 solicitation.

[17] PG&E RPS plan, pages 71-72.

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V. PLANS SUBMITTED BY ELECTRIC SERVICE PROVIDERS PROVIDE ALMOST NO USEFUL INFORMATION REGARDING PROCUREMENT ACTIVITIES AND THE LIKELIHOOD OF COMPLIANCE

TURN was disappointed by the paucity of content in the procurement plans submitted by Electric Service Providers (ESPs). These plans should be an opportunity for each ESP to provide meaningful insights into the selection process that will be used to meet upcoming compliance obligations. Moreover, it would be helpful to understand how ESPs are working with their customers to develop new renewable generation that will benefit California. Instead, these plans are filled with boilerplate language and offer practically no demonstration that ESPs are working to develop any new generation.

As an example, 3 Phases explains that it "plans to meet its future RPS obligations through a mix of bundled and REC-only transactions. The exact portfolio mix will depend the pricing that is available for various products"[18] Other ESPs similarly note that they will procure products that meet the RPS requirements without any additional specificity.[19] None of the plans shed light on the process used to evaluate bids, highlight important contracting issues, or point to lessons learned in recent years. Instead, the plans merely explain that the ESPs hope to comply with the law.

Moreover, none of the ESP plans provide any detail on new generation that could be built to serve direct access customer needs. With one exception, every ESP plan states definitively that there has been, and will be, no contracting for generation that is not already operating.[20] The exception involves a non-specific reference by Noble

[18] 3 Phases RPS plan, page 1.
[19] For example, see Calpine Power America plan, page 2.
[20] Calpine Power America plan, page 3 ("CPA does not execute contracts with any RPS eligible renewable resources that are not yet delivering generation"); Constellation New Energy plan, page 9 ("CNE's current contracts are with operational facilities"); Commerce Energy plan, page 4 ("Commerce Energy is not currently developing any renewable facilities and is not under contract

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Solutions to a single facility that should be operational by January 1, 2014.[21] These showings do not inspire confidence that ESPs are likely to provide any meaningful contribution to assisting California meet its aggressive goals. Rather, they paint a portrait of companies intending to do the bare minimum to avoid noncompliance and hoping that sufficient surplus resources will be available to meet their short-term needs.

TURN urges the Commission to find ways to encourage ESPs to play a more active and constructive role in meeting the RPS goals. ESPs should prove their market value by demonstrating their ability to truly innovate and harness the power of customer choice to drive the construction of new renewable resources that will benefit California.

Respectfully submitted,

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Dated: July 12, 2013

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with any renewable facilities under construction"; EDF Industrial Power Services plan, page 2 ("EIPS has not entered into any contracts with facilities that are not yet in commercial operation."); Liberty Power plan, page 4 ("Liberty Power is not currently developing any renewable facilities and is not under contract with any renewable facilities under construction"); Tiger Natural Gas plan, page 2 ("TNG has not entered into any contracts with facilities that are not yet in commercial operation.")

[21] Noble Solutions plan, page 4 ("Noble Solutions has one RPS agreements executed at this time solely contingent upon a RPS facility that is not yet operational. According to the developer, construction financing closed recently and they expect to have the project commercially operating before January 1, 2014.")

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VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2013, at San Francisco, California.

__________/s/______________

Matthew Freedman
Staff Attorney

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