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 THE PROPOSED DECISION CONDITIONALLY ACCEPTING 2013 RPS PROCUREMENT PLANS

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The Independent Energy Producers Association (IEP) replies to certain of the comments on the Proposed Decision Conditionally Accepting 2013 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan and On-Year Supplement (PD), issued by Administrative Law Judge Regina DeAngelis on October 15, 2013.

I. PG&E'S PROPOSED UNLIMITED CURTAILMENT

The PD correctly rejected the proposal of Pacific Gas and Electric Company (PG&E) to include a provision in its pro forma contract that would require the seller to agree to potentially unlimited curtailment. In its comments, PG&E attempts to defend its position by arguing that the unlimited curtailment provision is merely "a starting place for definitive contract negotiations."[1] However, a provision that allowed *no* curtailments is equally valid as a starting point for negotiations. By taking an extreme position that in theory could eliminate all renewable generation under a power purchase agreement (PPA) modeled on the pro forma contract, PG&E attempts to unfairly skew negotiations.

The Commission has previously endorsed only limited curtailment provisions that were tailored to respond to the price signals in the markets operated by the California

[1] PG&E's Comments, p. 10.

Independent System Operator (CAISO).[2] Although PG&E allows a bidder to propose a price to be paid during curtailments, the lack of information about how PG&E will value curtailment as part of bid evaluation leaves bidders guessing and exposed to financial impacts that are hard to quantify. By contrast, the comparable pro forma provision of Southern California Edison Company (SCE), which provides for 50 hours of uncompensated curtailment and compensation for curtailments in excess of 50 hours, allows the risk of curtailment to be quantified more easily and facilitates financing of the PPA. The PD's position on PG&E's proposal for curtailment should not be modified.

II. PG&E'S PROPOSAL TO ALLOCATE INTEGRATION COST RISK TO SELLERS

PG&E responds to the PD's rejection of non-zero integration costs by stating that its draft RPS Procurement Plan "simply puts the market on notice that PG&E will seek to allocate integration cost risk to seller so long as there is no integration cost adder used in evaluation of bids."[3] PG&E's proposal has several significant flaws. First, it is premature to allocate the risks of integration costs while the Commission is still considering the identification, definition, quantification, and possible allocation of integration costs.[4] Second, PG&E's proposal prejudges a decision properly left to the Commission—whether "it is appropriate to allocate some of the integration costs to sellers."[5] Third, PG&E fails to recognize that these risk factors are a function of policy decisions made by the Legislature, the Governor, and the Commission, and are outside the control of sellers. The PD should not be modified.

III. SCE'S TREATMENT OF CONGESTION

SCE proposes to allocate congestion risk by assigning negative locational marginal prices (LMPs) to energy-only projects.[6] SCE also proposes to use its congestion adder methodology to assign adders to all projects based on location.[7] However, SCE already has adequate tools to address congestion issues. SCE should consider potential congestion (and presumably use its improved congestion adder methodology) during bid evaluation, consistent with least-cost/best-fit (LCBF) principles. SCE can also use the economic curtailment

[2] D.11-04-030, pp. 17-18.
[3] PG&E's Comments, p. 13.
[4] PD, pp. 46-47.
[5] PD, pp. 46-47.
[6] SCE's Comments, pp. 3-4.
[7] SCE's Comments, pp. 4.

provisions of its PPA, including the 50 uncompensated curtailment hours, to avoid incurring negative LMPs. SCE also appears to overlook the fact that congestion and negative LMPs are a function of changes in both load and supply, and allocating congestion risk and negative LMPs only to supply is inaccurate and inequitable.

IV. PROJECT DEVELOPMENT SECURITY

The PD recognized that PG&E's proposed project development security of $300/kW—three to five times greater than SCE's comparable requirement[8]—was unreasonable.[9] PG&E again argues that its proposal is merely "a starting point for contract negotiations."[10] Here again, in a environment in which buyers have monopsony power, creating a negotiating starting point that favors the buyer essentially imposes a costly and unnecessary outcome on sellers. More troubling, forcing sellers to begin negotiations in an untenable position potentially undermines the financial viability of the project. SCE's project development security of $90/kW for baseload resources and $60/kW for intermittent resources is more reasonable and serves equally well as a starting point for contract negotiations without threatening renewable project developers with a crippling security requirement. The PD provides a reasonable resolution of this issue.

V. PG&E'S PORTFOLIO-ADJUSTED VALUE METHODOLOGY AND DEBT EQUIVALENCE

PG&E objects to the PD's instruction to remove the "contract term length adjustment" from its Portfolio-Adjusted Value (PAV) methodology because the PD accepts SCE's LCBF methodology, which includes consideration of debt equivalence.[11] However, contract term length is only one factor that rating agencies consider when they consider debt equivalence as part of an evaluation of a utility's credit quality, and the use of contract term length in the PAV methodology has not been publicly examined and justified. In addition, the use of debt equivalence in bid evaluation is limited to "cases in which the bids included in the solicitation are sufficiently similar that a comparison of relative DE-effects would not in turn

[8] PD, p. 47, fn.113.
[9] PD, p. 68 (Conclusion of Law No. 21).
[10] PG&E's Comments, p. 12.
[11] As described in D.07-12-052 (p. 161, fn.198), debt equivalence is "a tool used by credit rating agencies to assess potential financial risks associated with a utility's PPA obligations. In certain circumstances, a rating agency may treat some portion of PPA costs as payments on debt obligations rather than as operating costs (treating them as 'debt equivalent'), and in turn make corresponding adjustments to the utility's credit metrics and financial ratios used as part of the rating agency's overall assessment of credit quality."

suggest the need to consider other, potentially countervailing risk-related effects of selecting one bid over another," and no utility-owned generation projects are being considered.[12] PG&E has not demonstrated that its proposed contract term length adjustment is consistent with these principles.

VI. THE ELIMINATION OF SHORTLIST EXCLUSIVITY

The PD orders the elimination of shortlist exclusivity because the renewables portfolio standard (RPS) solicitation process "is highly competitive and involves many potential sellers."[13] San Diego Gas & Electric Company (SDG&E), however, urges retention of the exclusivity requirement.[14]

The PD correctly concludes that the highly competitive RPS solicitations reduce the possibility that any project could be in a position to obtain a higher price by playing one utility off against another. In addition, unwarranted exclusivity could harm ratepayers. Utilities shortlist more projects than they intend to contract with, and if a project can negotiate with only one utility, then viable, cost-effective renewable energy projects could end up without a PPA from any utility, even though the project may have been a better choice for utilities other than the one requiring exclusivity. Ratepayers benefit when the least-cost/best-fit projects receive PPAs, but the exclusivity requirement works against this goal.

VII. EXCESS ENERGY

In the process of editing IEP's Opening Comments, a sentence was inserted into the discussion that could be read in a way that misstates IEP's position. In the middle of the discussion of excess energy within a Settlement Interval, a sentence reads, "If a renewable generator is shown to be directly responsible for imbalance penalties imposed on the utility for unbalanced schedules, then that renewable generator should bear its fair share of the penalty." IEP understands that the Scheduling Coordinator frequently takes responsibility for the market mechanisms used to respond to normal variations in demand and supply that the CAISO refers to as imbalance "rewards" and "penalties." In some cases, the PPA may allocate responsibility for imbalances between the seller and buyer (in which case the renewable energy seller might assume responsibility for some level of imbalance "penalties"). IEP did not mean to suggest that

[12] D.08-11-008, p. 16.
[13] PD, p. 32.
[14] SDG&E's Comments, pp. 2-4.

renewable energy suppliers should routinely be held responsible for normal market fluctuations that reflect the unforeseeability of demand and variations in supply beyond their control. Adjustments required by normal market fluctuations should not be considered to be penalties.

VIII. CONCLUSION

For the reasons stated in these reply comments, the Independent Energy Producers Association respectfully urges the Commission to:

- Continue to reject PG&E's proposal for unlimited curtailment;
- Continue to reject PG&E's proposed allocation of integration cost risk;
- Decline to endorse SCE's treatment of congestion;
- Instruct PG&E's to reduce its $300/kW Project Development Security to a level more consistent with the security requirements of SCE and SDG&E;
- Reject PG&E's use of a contract term length adjustment in bid evaluation; and
- Eliminate shortlist exclusivity.

Respectfully submitted this 12th day of November, 2013 at San Francisco, California.

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By */s/ Brian T. Cragg*
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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 the Proposed Decision Conditionally Accepting the 2013 RPS Procurement Plans," dated November 12, 2013. 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 12th day of November, 2013, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg

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