

**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)

**COMMENTS OF THE CALIFORNIA WIND
ENERGY ASSOCIATION ON PROPOSED DECISION
CONDITIONALLY ACCEPTING 2013 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS**

November 4, 2013

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I. INTRODUCTION

Pursuant to the California Public Utilities Commission’s (“CPUC” or “Commission”) Rule of Practice and Procedure 14.3 , the California Wind Energy Association (“CalWEA”) respectfully submits these comments on the *Proposed Decision of Administrative Law Judge DeAngelis Conditionally Accepting 2013 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan and On-Year Supplement* (“Proposed Decision”).

CalWEA has reviewed the Proposed Decision and the investor-owned utilities’ (“IOU”) draft 2013 Renewables Portfolio Standard (“RPS”) Procurement Plans (the “2013 Plans”), including the proposed *pro forma* power purchase agreements (“PPA”), submitted by Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”). Based on this review, CalWEA recommends that the Commission should revise the Proposed Decision to:

1. Reject PG&E’s proposal to revise its *pro forma* PPA without disclosing those revisions to the Commission in RPS plan updates because the Commission needs to be aware of these revisions to discharge its statutory obligation to review and approve the RPS plans;

2. Reject SCE’s resource adequacy (“RA”) liquidated damages proposal because the proposal deviates from historical practice to shift to sellers a risk that sellers lack the capacity to manage;

3. Reject SDG&E’s proposed capacity valuations because they fail to reflect the surplus capacity forecast in the Commission’s long-term procurement planning (“LTPP”) proceeding and instead require all of the IOUs to provide transparent and reasonable capacity valuations;

4. Direct the IOUs to remove from the *pro forma* PPAs the buyer termination right for revised transmission network upgrade cost estimates in excess of the negotiated cap because the risk of revised network upgrade costs is now addressed by the Proposed Decision’s requirement for bidders to have a completed Phase II interconnection study; and

5. Direct PG&E to reduce the project development security for projects participating in PG&E’s 2012 RPS solicitation because the factors rendering \$300/kW unreasonable for the 2013 RPS solicitation are equally applicable to the 2012 RPS solicitation.

Each of these recommendations is addressed in greater detail below.

II. ARGUMENT

A. **The Commission Should Reject PG&E’s Proposal To Revise Its *Pro Forma* PPA Without Disclosing Those Revisions To The Commission In RPS Plan Updates Because The Commission Needs To Be Aware Of These Revisions To Discharge Its Statutory Obligation To Review And Approve The RPS Plans**

In its opening comments, CalWEA noted¹ that PG&E proposes that “it should be understood that the RPS Form PPA is a living document that will continue evolving throughout

¹ *Comments of the California Wind Energy Association on Draft 2013 Renewables Portfolio Standard Procurement Plans* (July 12, 2013), R. 11-05-005, at 3-4 (“CalWEA Opening Comments”).

the pendency of the RPS Plan proceeding.”² PG&E further asserts that “[b]ecause the RPS Form PPA is constantly changing, PG&E does not intend to submit revised versions of the PPA in future phases of the 2013 RPS planning cycle, but the next RPS Plan that PG&E files in a subsequent planning cycle will update the RPS Form PPA to include intervening changes.”³ The Proposed Decision does not address this element of PG&E’s 2013 RPS Plan. However, PG&E’s proposal is inconsistent with the Commission’s statutory obligation to review and approve RPS procurement plans, and therefore the Commission should revise the Proposed Decision to explicitly reject PG&E’s proposal.⁴

The Commission has a statutory obligation to review and approve the IOUs’ RPS Procurement Plans, which include the *pro forma* PPAs.⁵ While the *pro forma* PPAs may need to be revised over time due to changes in market and regulatory conditions, this does not relieve the Commission of its statutory obligation to review and approve that *pro forma* PPA. Thus, the Commission should direct PG&E to include any updates to its *pro forma* PPA that it intends to use in its solicitation with the rest of the updates to its RPS Plan that are submitted to the Commission for review and approval. This public process also ensures that other interested stakeholders are afforded the opportunity to review and comment on the revisions to ensure that the Commission has a balanced set of viewpoints to consider in its own review of the RPS Plans.

² PG&E June 28, 2013 Draft 2013 RPS Plan at 79.

³ *Id.*

⁴ Given that the Proposed Decision does not approve PG&E’s proposal, CalWEA’s view is that, even if the Proposed Decision is not midwived as requested in these comments, the IOUs would remain obligated to comply with existing Commission directives for updating the RPS Plans. *See, e.g., Assigned Commissioner’s Ruling Identifying Issues and Schedule of Review for 2013 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on a New Proposal* (May 10, 2013), R. 11-05-005, at 6-7 (“Updates to the filed proposed 2013 RPS Procurement Plans may be provided consistent with the schedule at Attachment A.”). To avoid ambiguity, however, the Commission should explicitly reject PG&E’s proposal.

⁵ Cal. Pub. Util. Code § 399.13.

To the extent that there are terms of that *pro forma* PPA that must be revised by PG&E to reflect changes in market and regulatory conditions between the time the RPS Plan is approved and the completion of negotiations between a given seller and PG&E, those changes to the *pro forma* can be reviewed by the Commission, along with all of the other negotiated deviations from the *pro forma* PPA, in connection with the Commission's review and disposition of PG&E's Tier 3 Advice Letter filing of the executed PPA.

Because the Commission has a statutory obligation to review and approve RPS Plans, including the *pro forma* PPAs, the Commission should revise the Proposed Decision to explicitly reject PG&E's proposal to be allowed to update the *pro forma* PPA without including those revisions in its filing of updates to the RPS Plans.

B. The Commission Should Reject SCE's RA Liquidated Damages Proposal Because It Deviates From Historical Practice To Shift To Sellers A Risk That Sellers Lack The Capacity To Manage

As noted in CalWEA's Opening Comments,⁶ SCE's 2013 Plan includes a departure from its historical approach to procuring RA capacity from renewable projects. Specifically, SCE proposes a new provision under which sellers that propose a full capacity deliverability status ("FCDS") project must pay SCE liquidated damages if the amount of net qualifying capacity ("NQC") assigned to the project by the CAISO is less than the qualifying capacity ("QC") of the project.⁷ The Proposed Decision does not address this element of SCE's 2013 RPS Plan. However, the Commission should reject this proposed revision to the RA provisions of SCE's *pro forma* PPA because this deviation from historical practice shifts the risk of a reduction in NQC to the seller even though the seller lacks any capacity to manage this risk.

⁶ CalWEA Opening Comments at 9-10.

⁷ SCE Written Plan at 43.

Pursuant to Section 40.4 of the CAISO tariff, the CAISO will determine a project's QC using criteria provided by the Commission. As SCE notes, a project's NQC may be reduced to a value less than the QC based on deliverability studies that assess the availability of transmission capacity on the CAISO system.⁸ SCE asserts that it values bids offering FCDS based on the amount of RA it is expected to provide, and that if the NQC (and thus the amount of RA available from the project) is reduced, then SCE would be paying for a benefit that it never received.⁹

However, SCE's proposal ignores the reality that the reduction in NQC resulting from deliverability studies is entirely outside the seller's control. The seller can request FCDS in the interconnection process, and cause the construction of the transmission system upgrades identified in its interconnection studies by funding them (for queue cluster 4 and earlier projects) or paying for them outright (for queue cluster 5 and alter projects), which is often a very substantial cost in either case. But, the seller has no role in transmission system planning once it is interconnected. Thus, the seller has no mechanism to mitigate the risk that its NQC may be reduced in the future. In contrast, SCE, as a participating transmission owner, has a much greater opportunity to expand the grid to avoid a decrease in NQC of the project (or SCE's entire portfolio of projects in the affected area).

Accordingly, the Commission should revise the Proposed Decision to reject SCE's proposal to assess liquidated damages to the seller for reductions in NQC.

⁸ *Id.*

⁹ *Id.*

C. The Commission Should Reject SDG&E's Proposed Capacity Valuations Because They Fail To Reflect The Surplus Capacity Forecast In The Commission's LTPP Proceeding And Instead Require All Of The IOUs To Provide Transparent And Reasonable Capacity Valuations

As described in CalWEA's Opening Comments,¹⁰ SDG&E's 2013 RPS Plan discloses that SDG&E intends to use proxy capacity prices of (1) \$120/kW-year for projects providing "local" RA, (2) the CAISO Capacity Procurement Mechanism ("CPM") rate (currently \$67.50/kW-year and already set to increase to \$70.88/kW-year early next year) for projects providing "Imperial Valley Area" RA, and (3) the CPUC penalty rate for failure to meet RA requirements for projects providing "system" RA.¹¹

In stark contrast to these rates, Energy Division and Policy and Planning Division have highlighted the current "large oversupply of generic system capacity" and reported recent median RA prices of \$1.65/kW-month (\$19.80/kW-year) for CAISO system RA and \$2.50/kW-month (\$30.00/kW-year) for SP26 local RA, which are a small fraction of the proxies proposed by SDG&E.¹² In addition, Decision 12-12-010 adopted, after stakeholder participation, the standardized planning assumptions and scenarios to be used in the 2012 LTPP proceeding for forecasting system reliability needs for California's electricity grid, including a "base case" that indicates that system supply will exceed system demand throughout the entire planning horizon – i.e., there is excess system capacity through 2034.¹³

The Commission should take this opportunity to connect its "siloes" LTPP and RPS proceedings by addressing SDG&E's proposed proxy capacity values. Given the current low prices for RA capacity and the forecast of excess RA capacity in the 2012 LTPP proceeding, the

¹⁰ CalWEA Opening Comments at 18-20.

¹¹ SDG&E 2013 RPS Procurement Plan at 38-39.

¹² CPUC Energy Division & Policy and Planning Division, Briefing Paper: A Review of Current Issues with Long-Term Resource Adequacy (February 20, 2013) at 5, 16.

¹³ D. 12-12-010 at Att. A, p. 21.

Commission should revise the Proposed Decision to reject SDG&E's proposed capacity valuations and require all of the IOUs to provide a transparent and reasonable capacity value for use in the LCBF evaluation of bids in the 2013 RPS solicitations that is consistent with findings in the LTPP proceeding.

Moreover, the calculation of the market value of capacity should be transparent. The IOUs should be applying a specific metric to each type of renewable technology to derive the expected RA capacity available from the project, and then multiplying that RA capacity by an RA capacity market price to determine the capacity value, which can then be discounted to present value. Each IOU should include in its RPS solicitation materials the IOU's assumptions for RA capacity by resource type, its forward price curve for RA capacity pricing, and its discount rate. Then, all stakeholders will have the information necessary to calculate the value to a given IOU of RA capacity that could be provided by a given project.

With a specific quantitative value for the capacity available from its project, a developer can make much more efficient decisions about whether to incur the costs associated with providing RA capacity, which also leads to more efficient expansion of the transmission system. As CalWEA has previously explained in this proceeding, the interconnection process presents separate decision points where the developer must choose whether to offer an incremental product to the IOU (i.e., a project can be offered as Energy Only without RA capacity and avoid certain transmission upgrade costs). In some cases, the cost for these upgrades is significantly higher than the value of RA capacity that the upgrades create. To make an efficient choice, the developer must know the value of the RA capacity to the IOUs in addition to the cost of the upgrades. This knowledge not only improves the RA procurement process but also prevents

developers from making inefficient interconnection choices that would lead to costly transmission upgrades to the detriment of the ratepayers.

Accordingly, the Commission should revise the Proposed Decision to direct all of the IOUs to provide transparent and reasonable capacity valuations.

D. The Commission Should Direct The IOUs To Remove From The *Pro Forma* PPAs The Buyer Termination Right For Revised Network Upgrade Cost Estimates In Excess Of The Negotiated Cap Because The Risk of Revised Network Upgrade Costs Is Now Addressed By The Proposed Decision's Requirement For Bidders To Have A Completed Phase II Interconnection Study

The Commission adopted a requirement in Decision 12-11-016 for the IOUs to include in their *pro forma* PPAs a buyer termination right for revised network upgrade cost estimates in excess of a negotiated cap.¹⁴ This termination right was intended to protect the buyer from increases in network upgrade cost estimates relative to the assumptions used in the LCBF bid evaluation, which could be based on Phase I interconnection study (or its equivalent) cost estimates. However, the Proposed Decision introduces a new requirement for bidders to have at least a Phase II interconnection study (or its equivalent) to be eligible to bid into the RPS solicitations,¹⁵ and the Phase II interconnection study cost estimates are much more refined than the Phase I interconnection study cost estimates required at the time the Commission adopted the buyer termination right. Because the Proposed Decision's interconnection study eligibility criterion addresses the network upgrade cost uncertainty that the buyer termination right was intended to mitigate, the Commission should revise the Proposed Decision to direct the IOUs to remove from the *pro forma* PPAs the buyer termination right for revised transmission network upgrade cost estimates in excess of the negotiated cap.

¹⁴ D. 12-11-016 at Ordering Paragraph 8.

¹⁵ Proposed Decision at 31.

In Decision 12-11-016, which conditionally approved the IOUs' 2012 RPS Plans, the Commission directed the IOUs to "incorporate terms into their respective pro forma agreements regarding termination rights and buy-down provisions in the event that the results of any interconnection study or agreement indicate that network upgrade costs will exceed a specific amount agreed to by seller and the utility."¹⁶ The Commission also required that bidders have at least a Phase I interconnection study (or its equivalent) to be eligible to bid into the RPS solicitations.¹⁷ The Commission explained that this package of requirements would "capture a more accurate estimate of a project's transmission upgrade costs and the resulting value to ratepayers."¹⁸ Prior to the Commission's adoption of Decision 12-11-016, CalWEA acknowledged the logic supporting this package of interconnection requirements, but also expressed concern that ambiguity around the timing for the vesting of the buyer termination right could adversely affect the financeability of the contract.¹⁹

The Proposed Decision introduces a fundamental change to the package of interconnection requirements established in Decision 12-11-016 that renders the buyer termination right for excess network upgrade cost estimates, and the associated ambiguity noted by CalWEA, unnecessary. Specifically, the Proposed Decision states that "SCE and SDG&E are authorize [sic] to include in their RPS bid solicitation protocols a requirement for a CAISO GIDAP (or GIP) Phase II (or equivalent) study to bid into its 2013 RPS solicitation" and directs PG&E to "modify its final 2013 RPS Procurement Plan to include the same requirement."²⁰ Thus, bidders would now be required to have at least a Phase II interconnection study (or its

¹⁶ D. 12-11-016 at Ordering Paragraph 8.

¹⁷ *Id.* at Ordering Paragraph 11.

¹⁸ *Id.* at 43.

¹⁹ *Comments of the California Wind Energy Association on Proposed Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans* (October 29, 2012), R. 11-05-005, at 7-9.

²⁰ Proposed Decision at 31.

equivalent) to be eligible to participate in the RPS solicitations, rather than a Phase I interconnection study (or its equivalent).

This new requirement for a Phase II interconnection study (or its equivalent) renders the need for the buyer termination right for a change in network upgrade cost estimates moot. In the interconnection process, interconnection customers first receive a Phase I interconnection study that provides initial indicative estimates of network upgrade costs, and then receive a Phase II interconnection study that provides a further refined network upgrade cost estimate.²¹ The network upgrade cost estimates in the Phase II interconnection study form the basis for the interconnection agreement that is subsequently tendered.²²

In the framework adopted by the Commission in Decision 12-11-016, the IOUs would perform their LCBF evaluation of bids based on the network upgrade cost estimates in the Phase I interconnection study (or its equivalent). Thus, the network upgrade cost termination right may have been necessary to mitigate against the risk that these cost estimates increased in the Phase II interconnection study. However, under the Proposed Decision's new requirement for a Phase II interconnection study (or its equivalent) to establish bid eligibility, the IOUs will already be performing their LCBF evaluation with "this more refined transmission cost estimate."²³ As a result, the buyer termination right for increased network upgrade cost estimates is no longer necessary to "capture a more accurate estimate of a project's transmission upgrade costs and the resulting value to ratepayers."²⁴ Yet, if the termination right is retained, the seller remains exposed to the ambiguity associated with a potential future buyer termination right.

²¹ See *e.g.*, CAISO Tariff Appendix Y §§ 6.4, 6.5, 7.1, and 7.2.

²² See *e.g.*, CAISO Tariff Appendix Y § 11.1.

²³ D. 12-11-016 at 42.

²⁴ *Id.* at 43.

Because the Proposed Decision's Phase II interconnection study (or its equivalent) eligibility criterion already addresses the network upgrade cost uncertainty that the buyer termination right was intended to mitigate, the Commission should revise the Proposed Decision to direct the IOUs to remove from the *pro forma* PPAs the buyer termination right for revised transmission network upgrade cost estimates in excess of the negotiated cap.

E. The Commission Should Direct PG&E To Reduce The Project Development Security For Projects Participating In PG&E's 2012 RPS Solicitation Because The Factors Rendering \$300/kW Unreasonable For The 2013 RPS Solicitation Are Equally Applicable To The 2012 RPS Solicitation

The Proposed Decision directs PG&E to "modify its 2013 RPS solicitation protocol and other parts of its 2013 draft RPS Procurement Plan, as necessary, to include a project development security equivalent to SCE's \$90/kW for baseload resources and \$60/kW for intermittent resources."²⁵ CalWEA strongly supports this element of the Proposed Decision. As CalWEA has previously advocated, PG&E's proposed \$300/kW project development security bears no relationship to the actual characteristics of the project being developed and increases the cost of renewable energy ultimately paid by its ratepayers.²⁶

As the Proposed Decision notes, the Commission declined to specifically address PG&E's \$300/kW project development security in PG&E's 2012 RPS Plan.²⁷ However, the Commission should revise the Proposed Decision to direct PG&E to reduce the security for projects participating in PG&E's 2012 RPS solicitation because the factors rendering \$300/kW unreasonable for the 2013 RPS solicitation are equally applicable to the 2012 RPS solicitation.

²⁵ Proposed Decision at 48.

²⁶ *Comments of the California Wind Energy Association on Assigned Commissioner Ruling Proposals and Draft 2012 Renewables Portfolio Standard Procurement Plans* (June 27, 2012), R. 11-05-005, at 14-15.

²⁷ Proposed Decision at 48.

The Proposed Decision finds the \$300/kW project development security “unreasonable”²⁸ in the context of the 2013 RPS Plan, stating that “[g]iven that the utilities are facing essentially the same project viability risks . . . PG&E’s rationale does not justify the substantial gap in amount required between PG&E and the other two utilities.”²⁹ Restated, PG&E’s proposed \$300/kW project development security is unreasonable because the utilities face the same project viability risk, yet PG&E seeks five times the security required by SCE for the same intermittent project.

These conditions, equivalent viability risk across the IOUs and a large gap between PG&E’s project development security and the security required by the other IOUs, are equally applicable to the 2012 RPS solicitation. As a result, the conclusion is the same – PG&E’s proposed \$300/kW project development security is unreasonable. The remedy should also be the same – the Commission should revise the Proposed Decision to direct PG&E to reduce the project development security for projects participating in PG&E’s 2012 RPS solicitation.

²⁸ *Id.* at Conclusion of Law 21.

²⁹ *Id.* at 48.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,



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VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the California Wind Energy Association on Proposed Decision Conditionally Accepting 2013 Renewables Portfolio Standard Procurement Plans* 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 November 4, 2013 at Berkeley, California.



Nancy Rader

Executive Director, California Wind Energy Association