

**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 06-05-027
(Filed May 25, 2006)

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON THE PROPOSED DECISION CONDITIONALLY ACCEPTING
PROCUREMENT PLANS FOR 2007 RPS SOLICITATIONS**

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop Additional
Methods to Implement the California Renewables
Portfolio Standard Program.

Rulemaking 06-05-027
(Filed May 25, 2006)

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON THE PROPOSED DECISION CONDITIONALLY ACCEPTING
PROCUREMENT PLANS FOR 2007 RPS SOLICITATIONS**

I. INTRODUCTION

Pursuant to the January 12, 2007 Proposed Decision of Administrative Law Judge Mattson ("Proposed Decision"), the California Wind Energy Association ("CalWEA") submits these comments to the California Public Utilities Commission ("Commission"). While brief, CalWEA believes that these issues are very important to the success of the RPS program and especially crucial for the utilities to meet their 2010 RPS program targets. While the Commission reminds the utilities numerous times throughout the Proposed Decision that they are ultimately responsible for complying with all RPS targets and deadlines, it will be very difficult to attribute a utility's shortfall to the specific contract terms addressed in this Proposed Decision. Therefore, CalWEA believes the Commission should modify the Proposed Decision in the areas that permit the utilities continued wide latitude on these issues.

II. COMMENTS

1. Any Perceived Lack of Evidence Should Not Prevent The Commission From Modifying The 2007 Plans

A. Credit Requirements: CalWEA objected to what it sees as an excessive amount of credit support required by Pacific Gas and Electric Company ("PG&E") and Southern California Edison Company ("SCE") in their pro forma contracts for application during project operations. As explained by CalWEA, completed and independently financed renewable projects have already gone through rigorous financial

and technical analysis by independent third parties and will continue to be subject to oversight for many years, making additional credit support to the utilities unnecessary. CalWEA then suggested that financial performance assurance in an amount equal to two months' projected revenues from developers might be an acceptable compromise.

In response, the Proposed Decision states that the Commission has "an inadequate record to order further modifications" and accepts the utilities 2007 plans on this issue as submitted. (Proposed Decision at 20.) Specifically, the Proposed Decision claims that CalWEA has not submitted any data evidencing that the utilities are being over-insured at the ratepayers' expense. (*Id.* at 19.) This is not the first time, however, that CalWEA and other developer representatives have objected to the utilities' overreaching deposit and collateral requirements. Now, the Commission sites lack of evidence as the basis for its rejection of CalWEA's concern. The Commission should appreciate, however, that the evidence that the Commission apparently is asking for is confidential and unavailable to developers. To the extent that developers have such evidence, again it is confidential and cannot be disclosed. In light of the foregoing, it is unfair to hold CalWEA and other developers to an evidentiary burden that they cannot possibly meet. The Commission should therefore order the utilities to demonstrate why such collateral requirements are necessary as they hold the evidence to support their actions, if any supporting evidence exists.

B. Scheduling Coordination: As discussed in CalWEA's comments, while CalWEA is appreciative that SCE has accepted scheduling responsibility, it believes that all utilities should serve as the scheduling coordinators for renewable projects and manage the risks associated with deviations between scheduled and actual generation. Just as the utilities manage deviations with existing QF projects under standard offer contracts, they should manage deviations with respect to RPS resources. CalWEA also promoted prudent management techniques, such as participation in the ISO's PIRP and mandatory good faith (but non-binding) delivery forecasts.

In response, the Commission declines to order PG&E and San Diego Gas & Electric Company ("SDG&E") to act as scheduling coordinators. (*Id.* at 35.) In support of this decision, the Commission states that it had "no information persuading us that

facilities are having undue burden performing this service themselves, finding SC services elsewhere, or participating in the PIRP." (*Id.*) The Commission likewise rejects CalWEA's argument that SCE should not be permitted to impose strict scheduling bandwidths within which wind projects must operate or face penalties. (*Id.* at 36.)

In connection with this latter issue, the evidence the Commission seeks has yet to be established as the SCE-designated bandwidth is a new feature of its proforma contract and there is no operating experience for renewables to submit to the Commission. Moreover, while the parties are certainly free to negotiate the risks associated with this narrow bandwidth, as these negotiations are confidential developers would not be able to disclose any supporting information gained from these negotiations. Finally, while CalWEA is supportive of the PIRP, by requiring binding schedules within a discrete bandwidth SCE has added an unacceptable second layer of risk for renewables participating in the program. If the Commission is interested in reducing hurdles within the RPS procurement process, it should reconsider permitting SCE to shift so much risk to RPS developers, risk that SCE accepts on behalf of its existing QF suppliers.

2. PG&E's Waiver Language Should Be Deleted

CalWEA objected to PG&E's over-reaching waivers in both its October 13, 2006 Scoping Memo comments as well as its October 16, 2006 comments on the proposed 2007 RPS plans. In its Proposed Decision, the Commission acknowledges that it had previously encouraged the utilities to rethink their disclaimers regarding the 2006 plans. (*Id.* at 34.) In response to PG&E in particular, the Commission states that its restriction on bidders seeking relief regarding any harm suffered participating in PG&E's RPS solicitation "should not be applied." (*Id.* at 57.) The Commission, however, does not demand that PG&E remove such waiver language, and merely states that "PG&E should consider editing its limitation and its description accordingly." (*Id.*)

The Commission should affirmatively require PG&E to remove the waiver language completely. Not only does it restrict bidders seeking relief, but it restricts them to filing for Commission assistance in R.04-04-026, which is a closed proceeding unavailable for filings, as the Commission acknowledges the language improperly limits

a bidder's rights. (*Id.* at 56-57.) The language is clearly unreasonable and the Commission should not allow PG&E, who has failed to modify or remove the language in response to previous Commission encouragement, to maintain such offensive language. Mere encouragement by the Commission is clearly not enough; PG&E must be directed to remove the offensive waiver language.

3. **SCE's Credit Support Language Should Be Deleted**

In the section of the Proposed Decision upholding the IOUs' proposed operation-phase credit requirements, the Commission states that "operating collateral provides a project developer with a financial incentive to continue to perform under the contract." (*Id.* at 21.) The Commission continues by quoting an argument taken from SCE's reply comments. (*Id.*) SCE's argument, and the Commission's reliance upon it, should be deleted as it is unsupported by evidence and not adequately addressed in the record.

First, it is important to appreciate that SCE is really addressing a creditworthiness concern designed to ensure that it can collect damages from a developer who breaches its contractual duties to perform. Requiring collateral is not an incentive for the developer to perform, as the Proposed Decision characterizes it; indeed this kind of incentive would be seen as an illegal penalty under California Law. (*Ridgley v. Topa Thrift and Loan Ass'n*, 17 Cal.4th 970, 977 (1998)) By requiring collateral, SCE is simply assuring itself that there will be money available to it should a breach occur.

Second, collateral is unnecessary for the same reasons that SCE desires it. If SCE is worried that a developer will chase upward-moving market prices in the future and breach its contract as a result, then it should be presumed that the developer would have money to pay damages as it would be receiving *more* money for its energy than it was under its contract with SCE. It is therefore in a better financial position, and more able to pay damages, than it would be if it remained under contract with SCE. Operating collateral is not required to ensure payment of damages when market prices are increasing.

Third, if Edison is concerned that levelized pricing encourages developers to breach contracts, then the solution should not be to require copious amounts of collateral;

rather SCE should consider offering pricing that is not levelized. This would allow developers an opportunity to pay lower credit costs for unlevelized pricing, and provide SCE with assurance that the developer will not be enticed by another purchaser to breach its contract with SCE.

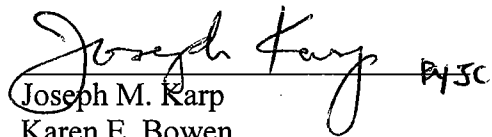
In light of the foregoing, it should be clear to the Commission that the issue of whether collateral provides developers with an incentive to perform or merely provides SCE with assurance that it will be able to recover damages if a developer breaches has not been adequately addressed in the record. The Commission should either adopt CalWEA's view that collateral is not necessary to disincentivize breaches by developers, or should remove the language in the Proposed Decision altogether.

Finally, CalWEA points out that the Commission reminds the utilities here, as it does in nearly every section of the Proposed Decision, that the utilities are ultimately responsible for complying with the 2010 RPS program targets and failure to voluntarily modify their 2007 plans would be looked upon poorly by the Commission should a utility fail to meet the 2010 deadline. CalWEA believes that it would be very difficult to attribute a utility's shortfall to a specific contract term. The Commission should therefore reconsider permitting the utilities such wide latitude when considering these important risk-sharing issues and modify the Proposed Decision accordingly.

III. CONCLUSION

CalWEA respectfully requests that the Commission revise the Proposed Decision as set forth above.

Respectfully submitted,


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Association

February 1, 2007

VERIFICATION

I am the Executive Director of the California Wind Energy Association and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

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

Executed this 19th day of February 2007 at Berkeley California.



Nancy Rader
Executive Director
CALIFORNIA WIND ENERGY ASSOCIATION

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Certificate of Service

I hereby certify that I have this day served a copy of the

***Comments of the California Wind Energy Association
on the Proposed Decision Conditionally Accepting
Procurement Plans for 2007 RPS Solicitation.***

on all known parties to R.06-05-027 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on February 1, 2007 at San Francisco, California.


Rosalie Marschall