

**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 2007 PROCUREMENT PLANS
AND SOLICITATION MATERIALS**

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October 16, 2006

**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 2007 PROCUREMENT PLANS
AND SOLICITATION MATERIALS**

I. INTRODUCTION

Pursuant to the August 21, 2006 Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”) and the September 14, 2006 Administrative Law Judge’s Ruling on Filing of Draft 2007 RPS Procurement Plans and Revised Schedule, the California Wind Energy Association (“CalWEA”) submits these comments on the utilities’ 2007 procurement plans and solicitation materials.

II. COMMENTS

1. General Comments

Generally speaking, the utilities’ 2007 procurement plans and solicitation documents reflect incremental improvement over prior years’ materials. For example, the utilities appear to have become more flexible and less draconian in their credit requirements (particularly with respect to project development security required prior to commercial operations). Southern California Edison Company (“SCE”) also has abandoned the Edison Electric Institute form contract, which as SCE reports, is cumbersome and ill-suited to project-based contracting. SCE has also agreed to take on Scheduling Coordinator responsibilities for renewable projects. All of these are items for which CalWEA has advocated in the past and that should improve the Renewables Portfolio Standard (“RPS”) process going forward. However, there remain substantial concerns with the utilities’ solicitation materials as described below.

2. Specific Comments

A. Credit Requirements: Although Pacific Gas and Electric Company (“PG&E”) and SCE have relaxed somewhat their credit requirements for developers during the project development stage, they still seek an excessive amount of credit support during project operations. In particular, PG&E requires a cash deposit or letter of credit equal to one year’s revenues for a 20-year power purchase agreement. (PG&E Protocol, Section X.C.) SCE does not mandate a year’s revenues, but it solicits alternative bids with financial credit support of six months’ revenues and a year’s revenues and says that it will not accept a bid without any financial credit support during project operations. (SCE Protocol, Section 7.03.)

As explained many times before by CalWEA, a deposit of this magnitude places a severe economic burden on project developers, causing them to inflate their prices significantly. Financial assurance of this magnitude is not warranted for completed and independently financed renewable projects, which have gone through rigorous financial and technical analysis by independent third parties and will continue to be subject to oversight for many years. Essentially, the utilities are “over-insured” at the ratepayers’ expense. While CalWEA believes that no independent financial performance assurance is needed once a project has achieved commercial operations, CalWEA is willing to accept that the utilities may want at least some “skin in the game” from developers and recommends that the Commission direct the utilities to seek financial performance assurance in an amount equal to no more than two months’ projected revenues from developers. This corresponds to typical reserve requirements required by project lenders.

B. Utility Owned Projects: PG&E reports in its procurement plan (at pages 16-17) that it is considering various options by which the utility will develop and/or acquire for itself renewable projects. CalWEA has objected in the past to allowing utility-owned renewables to count towards RPS requirements until the subject is fully vetted by interested parties. CalWEA is concerned that such competitive activities by utilities could chill development by independent power producers and discredit the RPS program due to concerns with utility gaming. CalWEA renews this objection and

recommends that the utilities not be encouraged to pursue direct ownership of renewable facilities until after the Commission has undertaken a public process to consider the relevant issues.

C. Financial Disclosures: PG&E's and San Diego Gas & Electric Company's ("SDG&E") protocols require renewable developers to agree to provide detailed financial information and access to records and personnel in the event that the utility determines that it must consolidate the developer's financial information with their own. (PG&E Protocols, Section XII.B; SDG&E Protocol, Section 8.0.) SDG&E refers to the amount of disclosure by the developer at issue as "opening its books" to SDG&E. (SDG&E Procurement Plan at 19-20.) Developers consider proprietary much of the information sought and, for various reasons, object to disclosing such information to the utilities. The fact that utilities are considering developing and owning their own renewable resources amplifies these concerns. Although they have long threatened that consolidation may be required, CalWEA is not aware of any requirement that the utilities actually consolidate developers' financial information with their own. SDG&E even reports that no consolidation has been required to date. (*Id.*)

As such, this requirement should be eliminated from the protocols. To the extent that an appropriate provision must be included in a power purchase agreement to deal with the ongoing risk of changes in accounting rules, CalWEA would not object to a carefully tailored contract provision. However, there should be no requirement that the developer agree up front as a condition of participating in the utility's solicitation to open its books to the utility.¹

D. Waivers: As discussed in CalWEA's October 13, 2006 comments in response to the issues listed in the Scoping Memo, PG&E's inclusion of various waivers in Section XVII of its protocols is over-reaching and should be eliminated. These types of waivers, which purport to preclude a bidder from pursuing claims against the utility anywhere other than in a protest to an advice letter seeking approval of other RPS

¹ PG&E requires, for example, bidders to execute a "protocol agreement" agreeing to be bound by the requirements of the protocols.

contracts, benefit nobody (neither developers nor ratepayers) except a utility that is acting unreasonably. Neither SCE nor SDG&E contain such offensive requirements in their protocols. The Commission should require elimination of such broad waiver language.

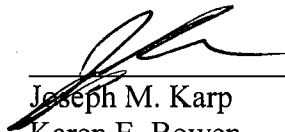
E. Repowers: CalWEA will respond to PG&E's comments on wind repowers in reply comments on the issues listed in the Scoping Memo.

F. Scheduling Coordination: As discussed in CalWEA's comments in response to the issues listed in the Scoping Memo, CalWEA has long advocated that the utilities should serve as the scheduling coordinators for renewable projects and manage the risks associated with deviations between scheduled and actual generation. CalWEA is gratified that SCE has accepted scheduling responsibility in its 2006 solicitation. However, SCE still seeks to impose the risk of deviations outside a very narrow bandwidth back on developers. (SCE Pro Forma PPA, Section 3.20.) This is not appropriate. Just as the utilities manage deviations with existing QF projects under standard offer contracts, they should manage deviations with respect to RPS resources. Of course, prudent management techniques, such as participation in the ISO's PIRP program and mandatory good faith (but non-binding) delivery forecasts should be employed.

III. CONCLUSION

CalWEA respectfully requests that the Commission adopt the recommendations set forth above.

Respectfully submitted,



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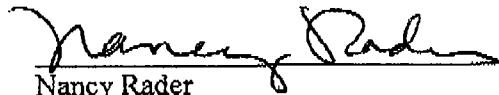
October 16, 2006

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 16th day of October 2006 at Berkeley, California.



Nancy Rader
Executive Director
CALIFORNIA WIND ENERGY ASSOCIATION

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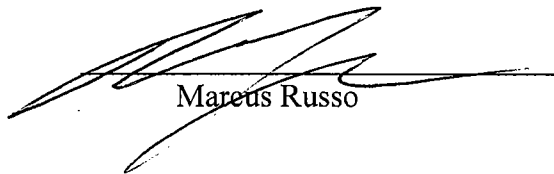
Certificate of Service

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

Comments of the California Wind Energy Association on 2007 Procurement Plans and Solicitation Materials

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 October 16, 2006, at San Francisco, California.



Marcus Russo