

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

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

Rulemaking 04-04-026  
(Filed April 22, 2004)

**COMMENTS OF THE  
CALIFORNIA WIND ENERGY ASSOCIATION  
ON DRAFT RENEWABLE REQUESTS FOR PROPOSALS**

*Received*  
**MAY 06 2005**  
*Public Utilities Commission  
Mailroom*

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May 6, 2005

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Pursuant to the April 18, 2005 ruling of Administrative Law Judge Simon, the California Wind Energy Association (“CalWEA”) submits these comments on the draft renewable requests for proposals (“RFPs”) of Southern California Edison Company (“SCE”), Pacific Gas and Electric Company (“PG&E”) and San Diego Gas & Electric Company (“SDG&E”).

As discussed below, CalWEA requests that the Commission make a limited number of modifications to the utility RFPs. The limited nature of the changes sought should not be read as endorsement by CalWEA of the remaining terms of the RFPs. Indeed, there are a number of RFP terms in each of the utility’s materials that are objectionable, including (but not limited to) unduly onerous credit terms, improper waivers of rights to pursue remedies against the utility and over-reaching representations and warranties required by the utility. These are items that CalWEA raised in previous comments and believes could discourage participation in the RFP processes. As CalWEA is not aware of any changed circumstances associated with these items that it could bring to the Commission’s attention, CalWEA will not complain again. CalWEA reserves the right to raise these items should any utility seek a deferral of RPS compliance or a waiver of penalties on the grounds of limited participation in its RFPs.

*1. The Utilities Should Abandon The EEI Form Agreements.*

Renewable suppliers have long objected to the use of the Edison Electric Institute (“EEI”) form documentation as the basis for RPS contracts. CalWEA expects that some of the delays associated with the utilities’ recent solicitations may be attributable to the

use of the EEI, an unnecessarily complicated and often inapplicable set of contract terms and conditions. CalWEA will not repeat all of the arguments presented in the past on this topic. It is enough to point out that Edison has abandoned the EEI altogether in its RFP documentation and PG&E has dropped the EEI confirmation, instead relying upon a 46 page “addendum” to modify and supplement the 40 page EEI master agreement.

CalWEA recognizes that it would probably not make sense to require PG&E and SDG&E (which adheres most faithfully to the EEI) to modify their current solicitation documents to abandon the EEI, but requests that the Commission require future solicitations to be structured around a more simplified contract structure in which all of the contract terms are in a single contract.<sup>1</sup>

2. *SCE’s Proposed Bid Deposit Should Be Conformed To PG&E’s.*

In SCE’s 2003 solicitation, SCE did not require bidders to post a bid deposit of any kind. Apparently it was not entirely satisfied with the results, as it is now requiring bidders to post a bid deposit when they first submit their bids. The required deposit is the greater of \$25,000 or \$5.00 per kW of project nameplate capacity.<sup>2</sup>

In PG&E’s 2004 solicitation, PG&E required bidders to post a bid deposit of \$5.00 per kW of project nameplate capacity when they first submitted their bids. This is almost identical to the bid deposit now proposed by SCE. Apparently, PG&E was not entirely satisfied with the results of its bid deposit requirement, as it is now requiring a \$3.00 per kW bid deposit, to be posted only upon the bidder being notified that it is on the utility’s short list.

CalWEA is not opposed to a reasonable bid deposit, as it could discourage frivolous bids. However, CalWEA believes that SCE should learn from PG&E’s experience and not commit “over-kill.” PG&E’s current approach properly balances the need to avoid wasting time negotiating frivolous bids with the desire not to discourage potentially real projects from bidding. Accordingly, the Commission should direct

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<sup>1</sup> CalWEA notes that Edison’s contract is not a simple contract; however, it is much easier to work with in that all of the terms are in a single document.

<sup>2</sup> SCE Protocol Section C.5.1.

Edison to employ a \$3.00 per kW bid deposit, to be posted upon a bidder being notified that the bidder is on the shortlist. Failure to post the deposit results in disqualification.

3. *The Utilities Should Be Required To Notify Bidders Whose Bids Are Rejected Within Seven Days After Finalizing Their Short Lists.*

The utilities all require that the bids submitted be binding on the bidder for a set period of time (e.g., PG&E proposes that the bid be open for at least 6 months).<sup>3</sup> They also say that the binding nature of the bid expires when the utility rejects the bid. They do not, however, have any deadline for notifying bidders when a bid is rejected (e.g., PG&E says, for example, that it anticipates notifying bidders shortly after publishing its short list).<sup>4</sup> Because a binding bid restricts the developer from key project development activities (i.e., pursuing potential power purchasers), the utilities should be required to notify a bidder within a fixed time period if the bid is not accepted; one week after the utility's short list is completed should be adequate. It is neither fair nor desirable for developers to have to hold their projects in abeyance until the utilities get around to notifying them that their bids are rejected.

4. *SCE Should Be Required To Conform Its Definition Of Delivery Point To PG&E's Definition.*

In PG&E's pro forma contract, the delivery point is to be at NP-15 unless the ISO changes the current zonal market structure (which the ISO is planning to do), in which case the delivery point is to be at the project's busbar.<sup>5</sup> The primary issue here is that with a nodal market structure, such as the one being developed by the ISO, congestion risks are fundamentally altered. CalWEA believes that PG&E has correctly recognized that it is in a much better position to manage the risks associated with congestion under a new market structure than are project developers. Accordingly, CalWEA supports PG&E's contract solution.

SCE's PPA, however, states that the delivery point is SP-15, or at SCE's load aggregation point or trading hub in SP-15 should the ISO change the market structure.<sup>6</sup> CalWEA believes that this term will not be acceptable to developers (or financing

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<sup>3</sup> See, e.g., PG&E Protocol at 6.

<sup>4</sup> PG&E Protocol at 32.

<sup>5</sup> PG&E PPA Addendum Section 3.1(c).

<sup>6</sup> SCE PPA at 1.28

parties) in light of the potential congestion risks referred to above. The Commission should require SCE to employ PG&E's proposed term, so as to avoid a very difficult contractual issue that could result in projects with PPAs not being financed or developed, or, still worse, being penalized down the road.

5. *PG&E and SDG&E Should Not Be Permitted To Acquire Renewable Projects At This Time.*

PG&E and SDG&E both propose that developers be permitted to bid two alternatives to traditional sales under power purchase agreements ("PPAs"): (i) a PPA that would allow the utility to buy the project after a number of years at a pre-determined price; and (ii) turn-key projects that would simply be built by the developer and then turned over to the utility at a pre-determined price.<sup>7</sup> As discussed in CalWEA's reply comments on Edison's and PG&E's renewable procurement plans and in CalWEA's opening comments on SDG&E's procurement plan, CalWEA is not, at this time, necessarily opposed to utility acquisition of renewables. We do believe, however, that it would be premature to allow the utilities to acquire ownership of renewables through their 2005 solicitations. Utility ownership of renewables, whether through PPA buyouts or turn-key projects, raises complex issues that must be addressed before they are permitted to go forth and acquire projects.

From the broad perspective, all of the Commission's RPS activities and mechanisms to date have contemplated third party sales and were not designed to accommodate utility ownership. These include the least cost / best fit bid evaluation methods that the utilities are required to employ, mechanisms, both contractual and otherwise, for supplemental energy payments, and flexible compliance rules. It is not at all clear that these mechanisms are suited for a solicitation involving both third party sales and utility acquisitions.

Among the particular issues that would need to be considered are how to (i) ensure that renewable suppliers are not discouraged from bidding third party sales options out of concern that the utilities will unduly favor the ownership options; (ii) compare properly bids permitting utility ownership (whether on a turn-key basis or

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<sup>7</sup> PG&E Protocol at 4-5; SDG&E Draft RFO at 4-5.

through a PPA and project buyout)<sup>8</sup> against bids that do not provide utility ownership under the Commission's least cost / best fit evaluation criteria; (iii) ensure that utilities do not favor unduly in contract negotiations bids with ownership options versus bids providing for only third party sales ; (iv) evaluate properly the added ratepayer costs associated with project ownership (e.g., O&M costs, administrative and general costs, and – for certain technologies – fuel costs); (v) evaluate properly the added ratepayer risks associated with project ownership (e.g., operating risk, force majeure risk and – for certain technologies - fuel price risk); (vi) ensure that the utilities do not discriminate against third party projects to favor their own resources in plant operations matters; (vii) address supplemental energy payment issues in the context of utility ownership (e.g., whether the utility-owned plants are eligible to receive the SEPs that the non-utility developer was or would have been entitled to receive); (viii) how to apply the compliance rules that permit shortfalls in excess of 25% if it is a utility-owned plant that is not generating sufficient energy to enable compliance; and (ix) whether there should be any limits on the kinds or amounts of renewable capacity that the utilities are permitted to acquire.

While CalWEA is not, at this time, necessarily opposed to utility acquisition of renewable projects from third parties,<sup>9</sup> before such acquisitions are authorized the Commission must address the above concerns. As such, it is premature to allow the utilities to acquire ownership of renewable projects through the 2005 solicitations. If the Commission wishes to pursue this option, CalWEA recommends that the Commission adopt a schedule including opening and reply comments so that the issues may be resolved in time for future utility solicitations.

Respectfully submitted,



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<sup>8</sup> Both SDG&E proposes to solicit in its RFP turn-key proposals and proposals that would allow it to purchase projects from the developers after number years of operation under the power purchase agreement.

<sup>9</sup> CalWEA is definitely opposed, however, to utility development and construction of renewable projects. As no party has suggested this, CalWEA will not comment further.

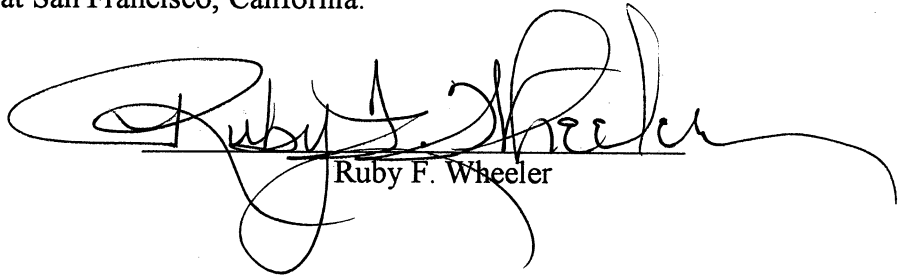
**Certificate of Service**

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

**COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION ON DRAFT  
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On all known parties to R.04-04-026 by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list.

Executed on May 6, 2005 at San Francisco, California.



Ruby F. Wheeler