

**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 08-08-009  
(Filed August 21, 2008)

**COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION AND THE  
CALIFORNIA WIND ENERGY ASSOCIATION ON THE 2009 RPS PROCUREMENT  
PLANS OF PACIFIC GAS AND ELECTRIC, SOUTHERN CALIFORNIA EDISON,  
AND SAN DIEGO GAS AND ELECTRIC**

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**I. INTRODUCTION**

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), the *Scoping Memo and Ruling of Assigned Commissioner* (the "Scoping Memo"), issued in R.08-08-009 on September 26, 2008, and the *Administrative Law Judge's Ruling Regarding Revised Schedule for 2009 RPS Procurement Plans*, issued in R.06-05-027 on August 12, 2008, the California Wind Energy Association ("CalWEA") and the Large scale Solar Association ("LSA") respectfully submit these Comments on the 2009 Renewables Portfolio Standard ("RPS") Procurement Plans of Pacific Gas and Electric ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas and Electric ("SDG&E"). CalWEA and LSA generally support the RPS Procurement Plans filed by the investor-owned utilities ("IOUs"). There are, however, three ways in which the RPS Procurement Plans should be improved. First, the RPS Procurement Plans should include an option for bidders to select a contract term of twenty-five (25) years. Second, the Commission should encourage IOU up-front funding of network upgrades required for renewable generator interconnections. Third, the Commission should establish a process for improving the consistency and transparency of the criteria that the

IOUs will use in project viability evaluation. Each of these improvements is discussed in greater detail below.

## **II. ARGUMENT**

### **A. The Procurement Plans Should Include An Option To Select A 25-Year Contract Term**

CalWEA and LSA propose the addition of a new standard delivery term option of twenty-five (25) years to be applied to each IOUs' RPS Procurement Plan.<sup>1</sup>

#### **i. Changes To Modifiable Standard Terms And Conditions Are Appropriate In RPS Procurement Proceedings**

Commission Standard Term and Condition ("STC") 5 addresses the term of the contract, and provides for standard delivery terms of ten (10), fifteen (15), or twenty (20) years, or a non-standard delivery term that must be justified to the Commission.<sup>2</sup> This STC is, however, modifiable.<sup>3</sup> As explained in D. 07-11-025, changes to modifiable STCs should be "vetted in the Commission's process leading to the acceptance, rejection, or modification of the applicable Procurement Plan."<sup>4</sup> Accordingly, CalWEA and LSA seek modification through this proceeding of STC 5 in each of the IOUs' RPS Procurement Plans to provide the option of a standard delivery term of twenty-five (25) years.

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<sup>1</sup> CalWEA and LSA also note that a recent proposed decision would already allow Commission staff to begin calculating twenty-five (25) year Market Price Referents ("MPR"). *See* Proposed Decision of ALJ Simon on Market Price Referent for the California Renewables Portfolio Standard, R. 06-02-012, at 24 (September 16, 2008).

<sup>2</sup> *See* D. 08-04-009 at Appendix A p. 11 (April 10, 2008).

<sup>3</sup> *See* D. 07-11-025 at 20 (November 16, 2007) (converting STC 5 "Contract Term" from non-modifiable to modifiable).

<sup>4</sup> *Id.* at 23.

**ii. A Twenty-Five Year Contract Term Promotes The Goals Of Increasing Renewable Generation And Minimizing Costs**

Twenty-five (25) year contract terms promote the Commission's policy of supporting renewables by assuring long-term support while spreading the capital-intensive cost of renewables more evenly over renewables' minimum expected service life. The assigned Commissioner has adopted the twin goals of increasing renewable generation while minimizing costs, noting that "[a]ll stakeholders share a responsibility to do everything reasonably possible to meet or exceed program goals while minimizing total program costs."<sup>5</sup> Providing the option of a twenty-five (25) year contract term achieves both of these goals.

Renewables are highly capital-intensive, but have extremely low variable costs relative to conventional generation. Renewable project developers typically secure third-party financing for some or all of the capital cost of a proposed project. To obtain financing, the developer will likely pledge the cash flow provided by the power purchase agreement ("PPA") for the sale of the facility's output to the IOU. If the maximum available contract term is twenty (20) years, the developer will seek no more than twenty (20) year financing, and price the power sale at the level needed to recover the total capital cost over the term of the financing. Because variable costs for renewables are so low, the cost of generation after the contract has expired would be extremely low as well, creating a sharp disjuncture between the first 20 years of the facility's operation and the facility's remaining service life, which may be decades. Spreading the capital cost over a longer proportion of the facility's life smoothes the curve, providing better assurance that the customers who pay for those capital costs receive more of the benefit of their investment,

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<sup>5</sup> Scoping Memo at 3, n. 3.

that they are exposed to less of a burden in the initial years, and that they experience less of a disruptive price shock as renewable contracts expire.

If offered the option of a twenty-five (25) year contract term, the developer will be able to extend the recovery of the cost of the facility over an additional five (5) years, thus leading to a lower bid price for the project. A lower bid price makes it more likely the bid will be accepted, the project will be built, and renewable generation will be increased, consistent with Commission goals. Furthermore, to the extent renewable generation procurement is ultimately limited by the availability of above-MPR funds ("AMFs"), a lower bid price could enable the development of additional generation prior to AMF exhaustion.

Likewise, a twenty-five (25) year term will reduce the costs required to meet the RPS targets. Because a twenty-five (25) year term allows the developer to contract to sell the same quantity of energy at a lower price during the early years of the contract, the total expenditure to meet the goal of 20% renewable energy by 2010 will also be lower. Moreover, the customers paying the reduced price for energy during the additional five years at the end of the contract will receive the value of the renewable energy received in the extended term, as opposed to a 20 year contract, in which the customer would likely pay a higher price and receive only 20 years of renewable energy. The market price of renewable energy in the twenty-first to twenty-fifth years of the contract very well could be significantly higher than the contract price, yielding substantial value to ratepayers. Moreover, any concern about the incremental cost of the additional five years of energy should be ameliorated by the application of the Commission's least-cost, best-fit ("LCBF") methodology, which will automatically filter out unduly expensive projects irrespective of contract term. Thus, twenty-five (25) year contracts will reduce the cost to achieve the goal of 20% renewable energy by 2010.

To be clear, CalWEA and LSA are not seeking a mandate that the IOUs enter into twenty-five (25) year contracts. Rather, CalWEA and LSA seek the addition of an option to select a standard delivery term of twenty-five (25) years. Currently, STC 5 provides for standard delivery terms of ten (10), fifteen (15), or twenty (20) years, or a non-standard delivery term that must be justified to the Commission.<sup>6</sup> CalWEA and LSA request that the Commission add a standard delivery term option of twenty-five (25) years, so that an agreement with a twenty-five (25) year term would not require independent justification to the Commission. The IOUs would not be obligated to enter twenty-five (25) year contracts. Instead, the IOUs would be obligated to consider bids with a twenty-five (25) year contract term as part of their RPS solicitations, evaluate these bids using the LCBF methodology, and justify the rejection of such bids to the Procurement Review Group ("PRG").

### **iii. The Benefits Of A Twenty-Five Year Contract Term Are Independent Of Debt Equivalency Arguments**

Historically, the IOUs have argued heavily that a large commitment to PPAs may negatively affect IOU credit ratings due to debt equivalence calculations.<sup>7</sup> Debt equivalency arguments, however, have no place in this proceeding. The Scoping Memo clearly precludes consideration of issues that are already the subject of other proceedings.<sup>8</sup> Debt equivalency is a primary issue in R. 06-02-013, and thus is not appropriate for consideration here. The Scoping Memo provides that policy issues resolved in other proceedings will be applied, as necessary, to the instant proceeding.<sup>9</sup> A proposed decision addressing debt equivalency has been issued in R. 06-02-013 that would permit application of debt equivalency "adders" to be considered in the bid

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<sup>6</sup> See D. 08-04-009 at Appendix A p. 11.

<sup>7</sup> See, e.g., Opening Brief of San Diego Gas & Electric Co., R. 06-02-013 (June 20, 2008); Southern California Edison's Amended Opening Brief on Debt Equivalence Issues, R. 06-02-013 (June 23, 2008).

<sup>8</sup> See Scoping Memo at 5.

<sup>9</sup> See *id.* at 4, n. 4.

evaluation process.<sup>10</sup> Thus, the debt equivalency must not be entertained in this proceeding, and the merits of a twenty-five (25) year contract term must be evaluated independently.

**B. The Commission Should Encourage Up-Front IOU Funding Of Network Upgrades**

While the Commission may be precluded from directly ordering the IOUs to provide up-front funding of network upgrades for renewable projects,<sup>11</sup> the Commission may still encourage the IOUs to consider doing so and require the IOUs to provide their analyses to the Commission as to the best interest of their customers in the event that they choose not to provide such funding.

CalWEA and LSA recognize that the Commission recently filed comments with the Federal Energy Regulatory Commission ("FERC") in the Generator Interconnection Process Reform ("GIPR") proceeding.<sup>12</sup> In the comments, the Commission eloquently described how developer up-front funding of network upgrades creates impediments to renewable development, and forcefully argued for mandatory IOU up-front funding of network upgrades associated with renewable generator interconnections.<sup>13</sup> CalWEA and LSA commend the Commission's efforts in the GIPR proceeding, and encourage the Commission to do what it can to ensure that IOUs are promoting renewable development and reduced customer costs until such time that federal tariffs are reformed to resolve the problem.<sup>14</sup>

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<sup>10</sup> See Proposed Decision of ALJ Brown on Petitions for Modification of D. 07-12-052 at 32, Finding of Fact 3.a. (October 6, 2008).

<sup>11</sup> See *Southern California Edison Co. v. PUC* 121 Cal. App.4th 1303, 1313 (2004).

<sup>12</sup> See FERC Docket No. ER08-1317.

<sup>13</sup> See Answer of the Public Utilities Commission of the State of California in Reply to Comments, Docket No. E08-1317, at 13-14.

<sup>14</sup> See *California Independent System Operator Corp.*, 124 FERC ¶ 61,292 at P 161 (2008) (declining to adopt mandatory IOU up-front funding of network upgrades).

Strengthening of Commission support for IOU up-front funding remains an important goal. Under FERC Order No. 2003,<sup>15</sup> a renewable generator is required to fund the cost of network upgrades if the Participating Transmission Owner (“PTO”) does not undertake that responsibility itself, with the cost of the upgrades credited back to the generator over a subsequent five-year period. The Commission is well-aware of the market failures and increased cost to customers that this policy may produce. Indeed, the Commission stated that “[f]or obvious reasons, generators are unlikely to be either willing or able to finance the totality of costs associated with large transmission upgrades sized to accommodate significant additional generation capacity.”<sup>16</sup> The Commission also acknowledged that Order 2003 provides a solution, at least with respect to network upgrades, by allowing the interconnecting transmission owner, in this case one of the IOUs, to voluntarily provide the up-front funding and apply for recovery of the costs under the wholesale transmission rate.<sup>17</sup> To further mitigate potential market failures, the Commission took this solution even further, holding that an IOU providing up-front funding of network upgrades associated with renewable generation interconnection may recover those costs from its retail ratepayers if FERC does not permit recovery through wholesale transmission rates.<sup>18</sup> Given the offer of a cost recovery backstop, the Commission “expect[ed] that in the majority of cases, the utilities will volunteer to build and pay for up front . . . all transmission network upgrades needed to interconnect both individual renewable projects and multi-developer renewable projects.”<sup>19</sup> The Commission's expectation has not yet been realized. The result could be a stunted renewable generation market.

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<sup>15</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003) (“Order 2003”).

<sup>16</sup> Decision 06-06-034 at 11 (June 15, 2006).

<sup>17</sup> *See id.*

<sup>18</sup> *Id.* at 38, Conclusion of Law 3; *see also* Cal. Pub. Util. Code § 399.25.

<sup>19</sup> D. 06-06-034 at 25.

To remedy this shortcoming, CalWEA and LSA propose that the Commission reiterate its strong support for IOU-funded network upgrades, and its commitment to ensuring cost recovery for IOUs that elect to do so. To further strengthen this commitment, the Commission should seek solutions that are within its own authority. First, the Commission should seek to allay IOU concerns about potential impacts to cash flow by adopting policies to minimize any regulatory lag that may exist with respect to cost recovery for IOU-funded network upgrades. For example, the Commission could provide a process to allow the IOUs to recover the costs of network upgrades from retail customers pending FERC approval of recovery in wholesale rates. Additionally, the Commission could allow the use of balancing accounts for IOU-funded network upgrade costs to allow more expedient adjustment of rates and recovery of costs. Second, the Commission should require IOUs to justify decisions to forego up-front funding of network upgrades associated with renewable generation interconnection. This justification should be required in connection with any failure by an IOU to reach the targets set by the Commission for achieving RPS goals, and should include justification of any increased cost exposure to customers.

The Commission should use the 2009 RPS Procurement Plan review as an opportunity to reiterate its support for IOU up-front funding of network upgrades and encourage the IOUs to include up-front funding as a component of their RPS Procurement Plans.

**C. The Commission Should Establish A Process For Improving The Consistency And Transparency Of The Criteria Used For Project Viability Evaluation**

Recently, many stakeholders have raised the issue of how to appropriately evaluate the viability of proposed projects under the RPS procurement process. CalWEA and LSA believe that the IOUs remain the appropriate parties to perform project viability evaluations, but must

use consistent and transparent criteria for these evaluations. Given existing penalties for failure to achieve procurement goals,<sup>20</sup> the IOUs have ample incentive to seek the appropriate balance of project viability and cost. In contrast, a complex new mandate would likely reduce the flexibility of both the IOUs and project developers, thereby impeding progress towards RPS goals.

CalWEA and LSA agree, however, that the consistency and transparency of the process used by the IOUs to evaluate project viability should be improved. Improved transparency will enable the Commission, developers and other stakeholders to better understand the requirements and needs of the utilities, and Commission oversight of the development of consistent and transparent criteria to be applied in the evaluation process will ensure that those criteria are both appropriate and appropriately applied. Accordingly, the Commission should establish a process to allow the parties to meet and develop a consistent and transparent set of criteria that the utilities will use to evaluate project viability. If project-specific facts support appropriate divergence from those criteria, the IOUs should be allowed to justify such divergence to the Commission, but the development of those criteria through the Commission's proceedings will ensure that they will incorporate developer feedback and that they will be suitable for most circumstances.

Finally, the Commission should require the IOUs to explain the application of criteria for project viability evaluation to utility-owned generation ("UOG"). Given that the IOUs are now eligible for investment tax credits ("ITC"), UOG bids may become more prevalent. As with any bid, the UOG bids will carry development risks that will require evaluation. Accordingly, consistent and transparent criteria for evaluation of UOG viability will be necessary as well.

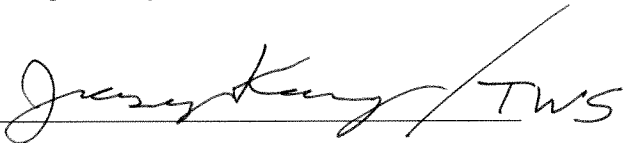
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<sup>20</sup> See, e.g., D. 06-10-050 (October 19, 2006).

### III. CONCLUSION

In sum, CalWEA and LSA (1) support the addition of a twenty-five (25) year standard delivery term option, (2) request that the Commission re-affirm and strengthen its support for IOU up-front funding of network upgrades, and (3) request that the Commission convene a process to develop a consistent and transparent set of project viability criteria, subject to Commission approval, to be used by the IOUs in evaluating projects.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph M. Karp / TWS", written over a horizontal line.

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October 15, 2008

## Certificate of Service

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

***Comments of the Large-scale Solar Association and the California Wind Energy Association on the 2009 RPS Procurement Plans of Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric***

on all known parties to R.08-08-009 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 15, 2008 at San Francisco, California.

  
Peggy Jane Basa