

**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)

**RESPONSE OF THE CALIFORNIA WIND ENERGY
ASSOCIATION TO THE ENERGY DIVISION DATA REQUEST
FOR COMMENTS ON THE REVISED PROJECT VIABILITY
CALCULATOR FOR USE IN THE RPS SOLICITATIONS**

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INTRODUCTION

On April 17, 2009, the California Public Utilities Commission ("Commission") Energy Division issued the *Energy Division Data Request for Comments on the Revised Project Viability Calculator for use in the Utilities' Renewables Portfolio Standard (RPS) Solicitations* ("Data Request"). The California Wind Energy Association ("CalWEA") respectfully submits this response to the Data Request and provides the following comments in response to the questions set forth in the Data Request.

RESPONSE

I. Part A: Revised Project Viability Calculator (PVC.v3)

- 1. Review and comment on: 1) the Matrix of Proposed Criteria (Attachment A), and 2) the PVC criterion definitions and scoring guidelines (Refer to PVC.v3, "Criteria_Scoring Guidelines" tab). Please provide a rationale for why each criterion should or should not be included in the PVC. Any proposed modifications should be justified and incorporated into the PVC and attached to your data response.**

Category: Company/Development Team

Project Development Experience

CalWEA supports including this criterion because a developer that has successfully developed projects in the past is going to be more likely (assuming project-specific issues such as technology, site control, permits, and interconnection are equivalent) to develop a successful project in the future than a developer that lacks prior experience. CalWEA also supports staff's blended approach to scoring this criterion that considers the experience of both the development team and the development company.

Facility Ownership; Operations and Maintenance ("O&M") Experience

CalWEA opposes including this criterion because it bears little relationship to project viability ("PV"). To properly evaluate a given project's viability, the issue is whether the developer is capable of successfully developing a new project, not whether the developer has experience holding title to an existing facility. As CalWEA noted in earlier comments, a particular company may own a dozen operating renewable facilities, but if that company purchased each of those facilities after completion and with O&M contracts in place, then it may have no experience actually developing a new facility. Yet, a project proposed by this company will be deemed more viable by virtue of having purchased an existing facility. The risk that a developer lacks sufficient experience is better considered in the context of the "project development experience" criterion.

Likewise, the relationship between O&M experience and project viability is tenuous. Many developers with a history of successful projects choose to outsource O&M to a contractor.

Furthermore, CalWEA's understanding is that the utilities do not even require an O&M contractor to be identified when bids are submitted.

Project Financing Experience

CalWEA opposes including this criterion because it is superfluous. Most renewable facilities are financed using non-recourse project financing. The project company's ability to obtain such financing is dependent on the underlying project and its power purchase agreement ("PPA"). A strong project using proven technology, with a proven resource, site control, permits, an interconnection agreement, and a PPA (with an energy price sufficient to cover debt service) is highly likely to be financeable. Indeed, a project company can hire a financial advisor with the requisite experience to guide it through the financing process. Thus, the relevant factor is the project's strength, which will already be evaluated in the "technology" and "development milestones" categories. Likewise, the number of projects for which the developer has previously obtained financing is already reflected in the "project development experience" criterion. As such, this criterion is unnecessary.

Category: Technology

Technical Feasibility

CalWEA supports including this criterion because it is highly correlated with project viability. For this reason, the "technology" category generally, and the "technical feasibility" criterion specifically, should be weighted more heavily than any other consideration in the PV scoring. Unproven technology carries a high risk that the technology will ultimately be incapable of performing as expected or cost much more than expected to install or maintain.

Moreover, a project based on unproven technology will be more difficult to finance. A project employing proven technology, on the other hand, has a higher level of certainty with respect to installed cost, operating cost, and ability to obtain financing.

CalWEA proposes that the scoring guideline be modified to consider not only how many projects using the technology are in operation, but also how long such projects have been operating. CalWEA proposes that operating facilities utilizing a given technology should have two years of operating experience for the technology to be considered proven.

Resource Quality

CalWEA supports including this criterion because a project that is based on a resource of known and appropriate quality will be more viable than a project with questionable resource quality. This criterion must be scored based on the relationship between the resource quality and the project's bid, and not simply based on the absolute quality of the resource, because the appropriate level of resource quality is a function of the economics of the bid.

Technical Design

CalWEA supports including this criterion because supply chain constraints can affect the viability of a project. If a given project relies on a technology for which there is insufficient manufacturing capacity, then there is a potential risk that the project may be delayed or that cost may increase significantly due to scarcity.

CalWEA proposes, however, that the scoring guidelines be modified to remove the concept that reliance on proprietary technology results in a lower score. If the technology is unproven, that should be reflected in the "technical feasibility" criterion; this criterion, "technical

design," should consider potential supply chain constraints. In addition, this criterion should be weighted much lower than "technical feasibility" within the "technology" category because it has a much lower impact on viability.

Category: Development Milestones

Site Control

CalWEA supports including this criterion because obtaining site control is a prerequisite to successful development. CalWEA proposes that the scoring guidelines be modified, however, to reflect that not all projects are developed on private land. For projects developed on Bureau of Land Management ("BLM") land, the scoring guidelines should also recognize a BLM Type II right-of-way ("ROW") as evidence of site control for purposes of scoring this criterion.

Expanding the guidelines to include a BLM Type II ROW as evidence of site control is appropriate because the ROW provides the holder with the right to exclude other developers from the same site, just as the holder of an option on private land can preclude development of that site by other developers. While the developer with a BLM Type II ROW may still be required to subsequently submit a plan of development to BLM, this is no different than the requirement for developers of private land (whether the developer holds an option or owns the land outright) to subsequently submit required permit applications. Given that this criterion is intended to measure whether the developer has sufficient control over the land needed to develop the site, the exclusivity provided by the Type II ROW provides a level of assurance equivalent to that provided by an option on private land. Therefore, the guidelines should be expanded to include a BLM Type II ROW.

Permitting Status

CalWEA supports including this criterion because obtaining permits is a prerequisite to successful development. CalWEA also supports the scoring guidelines because the scores are intended to reflect the feasibility of obtaining permits, not mere procedural progress.

Interconnection Progress

CalWEA supports including this criterion because obtaining interconnection is a prerequisite to successful development. CalWEA proposes that the scoring guidelines be modified to better capture the full scope of the interconnection process. Specifically, CalWEA proposes that the scoring guidelines should be as follows:

- 10 project is already interconnected
- 9 interconnection facilities under construction
- 8 Certificate of Public Convenience and Necessity ("CPCN") or other critical path permit, if any, has been issued
- 7 CPCN or other critical path permit application, if any, has been filed
- 6 Large Generator Interconnection Agreement ("LGIA") or Small Generator Interconnection Agreement ("SGIA") has been executed
- 5 project is in Phase II study or can connect through the Small Generator Interconnection Procedures
- 4 project is in Phase I study or is out-of-state and has applied for its interconnection agreement
- 0 none of the above

Transmission System Requirements

CalWEA supports including this criterion because a project that is known to require substantial transmission upgrades is likely less viable than, for example, a project located adjacent to a 500 kV substation with significant excess capacity. The viability of a project requiring significant transmission upgrades is less certain due to potential increased costs associated with long gen-ties, direct assignment facilities, or increased funding obligations related to network upgrades, as well as significant time delays related to the time required for permitting and construction of such facilities. In contrast, a project located adjacent to a 500 kV substation with significant excess capacity will not be exposed to these risks.

Commercial Online Date

CalWEA opposes including this criterion because there is no validation process associated with the online date proposed by the developer. For example, a developer could propose an unrealistic near-term date in an attempt to increase its PV score, and revise its estimate after it is shortlisted. In addition, this criterion is likely superfluous because a project with a legitimate near-term expected online date will also have progressed further in the permitting and interconnection processes, and this progress will be reflected in the project's PV score through the "permitting status" and "interconnection progress" criteria.

2. Review and provide comments on Energy Division staff's PVC.v3 regarding its functionality and transparency.

Subject to the comments provided in response to Part B: Question 2, below, CalWEA believes PVC.v3 is sufficiently transparent. To further promote transparency, the project

viability calculator ("PVC"), including specific weightings of individual criterion and categories, should be included in each utility's solicitation materials.

II. Part B: Questions

1. **Staff proposes a scoring range from 0-10 for each criterion. Please comment on whether you agree that this scoring methodology provides a sufficient amount of gradation to account for varying degrees of development risk, without purporting a false sense of accuracy. If not, explain why and propose an alternative methodology.**

CalWEA supports staff's proposed scoring range. A broad scoring range, such as 0-10 for each criterion, allows the utilities to exercise independent judgment within the overall framework of the PVC, which uses the criteria and category weightings to reflect the relative impact of an individual issue on overall viability. Wider scoring ranges also allow the utilities to reflect their evaluation of an individual project's risk profile with respect to each criterion without changing the Commission's determination of the relative importance of each criterion or category. Thus, staff should retain this proposal.

2. **Staff and parties have proposed methodologies to weight the categories (e.g., developer experience, technology, and project milestones), and/or the specific criteria within each category (e.g., permitting or site control). At the workshop parties discussed what the *right* weighting for one category vs. another was. Staff agrees with parties that the relative weighting of the three project viability categories is important for the PVC's effectiveness. However, rather than requiring a specific percentage weight for each category, the Commission may wish to provide the utilities guidance on the relative weights of the categories. For example, that from a project viability perspective, the development milestones category is more important than developer experience, but less important than technology.**
 - a. **Please identify and provide a rationale for your preferred rank order of importance for the three project viability categories, which would then inform their relative weighting.**

For example, 1 = development milestones, 2 = technology and 3 = developer experience.

The weighting of the three categories presents the single most important issue in connection with developing a useful PVC. CalWEA proposes that the appropriate ranking order is (1) technology, (2) development milestones, and (3) developer experience. This position is based on the relative importance of each category as an indicator of a project's viability, *i.e.*, the likelihood of a project achieving commercial operation. Developer experience is the least important of the three categories because a project that is strong in the other two categories (utilizes proven technology and has made significant progress towards obtaining site control, permits, and interconnection) is still highly likely to achieve commercial operation even if the developer fails. This is because a strong project can easily be sold to another developer, which will then continue to develop the project. Conversely, technology is the most important of the three categories because a project utilizing unproven technology, even if pursued by a strong developer and with significant progress towards obtaining site control, permits, and interconnection, is less likely to achieve commercial operation. This is because (i) unproven technology may simply not work as intended, or even at all, and (ii) the unproven nature of the technology will render the project less likely to obtain financing.

CalWEA further submits that the specific percentage weight for each category should be explicitly established by the Commission prior to the release of each utility's solicitation materials to ensure the scoring is fair and reasonable. As noted above, striking an appropriate balance between each of the categories is the single most important step in developing a fair and useful PVC. Given this importance, establishing the specific category weightings requires Commission involvement.

However, to the extent the Commission chooses to provide guidance on relative weight, and not specific weightings, then each utility should still be required to establish fixed weightings and disclose such weightings in its solicitation materials. A transparent PVC (including weightings), provided in advance, is essential to provide meaningful signals to which the market can respond. Additionally, if the utilities are permitted to establish their own utility-specific weightings, the Commission should not attempt to compare PV scores across utilities.

- 3. Parties and staff have explored the relationship between a project's price and its viability in three main areas. First, as a means of reducing the likelihood of future contract amendments through indexing; second, as a remedy to the assertion that some developers are bidding to be shortlisted rather than bidding their true development costs; and finally, to screen for projects with a bid price not high enough to generate sufficient revenues to be viable. Staff believes that there is a relationship between price and project viability that should be considered in the utilities' procurement of renewable resources. That said, staff sees limited value in assessing project viability based on price, on a project-specific basis, in the PVC. Rather, staff believes that it makes more sense to examine price, and the relationship between price and viability, in the least-cost, best-fit evaluation where the utility can examine the reasonableness of a project's price, relative to all other projects, by technology and other like characteristics.**
 - a. Please comment on whether you agree or disagree with this proposal. If you disagree, any proposed modifications should be justified and incorporated into the PVC and attached to your data response.**

CalWEA disagrees with staff's proposal. Price is related to project viability in that a price that is too low may create impediments to financing (or, more realistically, lead to a subsequent request for amendment of the pricing). This price-PV relationship is better addressed within the PVC, where the financing risk can be evaluated alongside other PV risks. This additional criterion should be included within the "technology" category, and scored in a similar manner as the "resource quality" criterion is scored. Specifically, the utility should compare the

bid price for the project to other bid prices for the same technology and assign a lower score to a project that bids a price that is significantly lower, after considering differences in resource quality among the bids, than the majority of the other bids.

This criterion should receive a relatively low weighting within the "technology" category. While a price that is too low relative to other projects using the same technology may suggest a potential impediment to successful development, the developer may still be able to obtain financing for the project by substantially increasing its equity contribution. In contrast, the risk presented by a low score in the "technical feasibility" criterion, for example, cannot be remedied by the developer because it lacks the ability to unilaterally convert an unproven technology into a proven one. Accordingly, a new "price" criterion should receive a lower weighting.

Including a "price" criterion in the PVC does not mean that the utilities would be precluded from short-listing a project with a relatively low bid price. Within the LCBF process, the utilities could still shortlist a bid with a price that is significantly lower than the average price for bids employing similar technology by providing a justification for selecting a project with a lower PV score, e.g., a justification that is specific to the project or based on the utility's overall procurement plan.

- 4. In its Staff Proposal for integrating project viability into the RPS procurement process, staff proposed that a project's project viability score would determine the level of development security. The Union of Concerned Scientists (UCS), in its comments to the ACR, proposed that it may be more appropriate for development security to be added as a criterion for assessing project viability.**
 - a. Please comment on whether you support UCS's proposal. Identify strengths and weaknesses of including development security as a criterion of project viability and propose how development security criterion should be incorporated into the PVC, if at all.**

CalWEA opposes UCS's proposal. The PVC is intended to provide an indication of the relative probability that a project will be developed successfully. A project achieves commercial operation by employing viable technology and obtaining site control, permits, and interconnection. Posting a high level of development security, on the other hand, may discourage a developer from abandoning a project, but it does not cause a project to achieve commercial operation. Thus, while development security is an important part of the development process, it is not an indicator of viability and therefore should not be included in the PVC.

In contrast, CalWEA continues to support staff's original proposal to reduce the amount of development security required for projects with high PV scores. Providing differentiated development security levels creates an economic incentive for developers to maximize their PV scores. By requiring that the amount of development security be linked to the project's PV score, the Commission can also reduce the risk that a relatively more viable project is unable to obtain a PPA due to an inability to obtain the funds needed to post the development security at the time required.

- 5. PG&E and SDG&E proposed methodologies that would result in adjustments to a project's PVC score, under certain conditions (Refer to Attachment A, and PG&E's and SDG&E's comments on the ACR).**
 - a. Discuss the strengths and weaknesses of these proposals and whether they should be included in the PVC. Support of these proposals or other methodological modifications should be justified and incorporated into the PVC, and attached to the data response.**

CalWEA opposes SDG&E's proposal to establish a cap on the PV score in the event the project has serious issues in a single criterion such as financing, permitting, or site control. As the parties to this proceeding have recognized, PV scores are merely indicative of the likelihood

that a given project will achieve commercial operation.¹ To the extent that a given project faces significant impediments to obtaining site control, permitting, or financing, these difficulties will already be reflected within the project's PV score. Such a project will have a relatively lower PV score, and the utility can justify its decision not to accept the bid within the LCBF process on such basis.

Likewise, CalWEA opposes PG&E's proposal to adjust the overall score within the "company/development team" category based on the utility's prior experience with the developer. While CalWEA supports the proposition that the utilities should be able to exercise independent judgment within the scoring process, CalWEA also supports the proposition that the PVC should be transparent. PG&E's proposal, however, places these positions in potential conflict and thus should not be adopted. Within staff's proposed PVC, the utilities already have the ability to make adjustments within each criterion in the "company/development team" category because each criterion uses a broad 0 to 10 scoring range to permit the utility to exercise its judgment. If a utility believes a larger adjustment is needed to reflect prior experience, then this should be addressed in the LCBF process, wherein the utility can make the argument that it has (or has not) accepted a given bid due to prior positive (or negative) history with the bidder. By using this approach, the PVC will retain a higher level of transparency, and the utilities will retain the ability to reflect prior experience with a developer within the procurement process.

6. **The utilities' RPS solicitations permit proposals from all RPS-eligible resources and technologies, at any stage of commercialization. This presents a challenge for developing a PVC that can apply to all projects without unduly rejecting emerging technologies. As an interim approach, until the commission has expressed a policy preference regarding the role of emerging technologies relative to commercial technologies, staff proposes that a single PVC be applied to commercial and emerging technologies.**

¹ See April 7, 2009 Workshop Agenda at p. 2.

Projects that score below a certain threshold in the technology category will then be separately grouped and evaluated against other projects in this group to determine relative viability.

- a. Please comment on this proposal. If you disagree, please explain an alternative proposal for separately evaluating projects that would rely on emerging technology. Any proposed modifications should be justified and incorporated into the PVC and attached to your data response.**

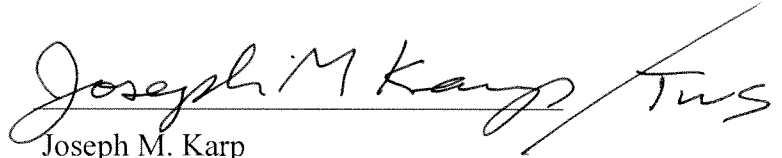
CalWEA agrees with staff's proposal to apply the PVC to all projects irrespective of technology type. As CalWEA noted in its February 27, 2009 comments, while emerging technology projects may receive comparatively low PV scores,² this does not mean that emerging technology projects should not be able to secure a PPA. Renewable energy procurement is not a zero-sum game. While application of the LCBF process will create winners and losers, this does not preclude the Commission from encouraging the development of emerging technologies in parallel with the LCBF process. The Commission should permit the utilities to exercise their discretion to contract with emerging technology projects with low PV scores for some limited amount of capacity (or above-market funds), provided that the utilities submit an explanation to the Commission justifying the decision to contract for an emerging technology project with a low PV score. By using this approach, PV scores could be calculated for all technology types without foreclosing the opportunity for projects with low PV scores to obtain a PPA.

² Note that comparatively low PV scores for emerging technology projects is not a foregone conclusion. Such a project may actually receive a comparatively high PV score if it is being developed by an experienced developer with site control and substantial progress towards obtaining permits and interconnection.

CONCLUSION

CalWEA thanks Energy Division for its substantial work and progress to date on the PVC and requests that Energy Division consider the comments set forth herein.

Respectfully submitted,

Handwritten signature of Joseph M. Karp and Thomas W. Solomon in cursive script.

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Certificate of Service

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

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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 May 5, 2009, at San Francisco, California.

A handwritten signature in black ink, appearing to read 'M. Hidalgo', written in a cursive style.

Marcus Hidalgo