

**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 CALIFORNIA WIND ENERGY ASSOCIATION
ON PROPOSED DECISION CONDITIONALLY ACCEPTING 2009 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED
RESOURCE PLAN SUPPLEMENTS**

Joseph M. Karp
Thomas W. Solomon
Winston & Strawn LLP
101 California Street, 39th Floor
San Francisco, California 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
Email: jkarp@winston.com
tsolomon@winston.com

May 21, 2009

Attorneys for the California Wind Energy Association

**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 CALIFORNIA WIND ENERGY ASSOCIATION
ON PROPOSED DECISION CONDITIONALLY ACCEPTING 2009 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED
RESOURCE PLAN SUPPLEMENTS**

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the California Wind Energy Association ("CalWEA") respectfully submits these comments on Administrative Law Judge ("ALJ") Mattson's proposed *Decision Conditionally Accepting 2009 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Supplements* ("Proposed Decision").

As general principles, CalWEA believes that development of a robust renewable energy market in California requires (1) avoiding artificial constraints that preclude a competitive renewable market, such as geographic preferences in the solicitation process, and (2) implementing a program that gives the investor-owned utilities ("IOUs") discretion to select those developers and projects the IOUs believe are viable, but at the same time holds the IOUs accountable for their decisions by assessing automatic non-compliance penalties if they fail to

meet their procurement obligations.¹ The following comments and recommended changes to the Proposed Decision are based on these principles.

CalWEA agrees with many of the provisions in the Proposed Decision. For example, CalWEA supports rejecting remedial measures to ensure selection of Imperial Valley ("IV") resources,² directing the use of broad scoring ranges for calculation of project viability scores,³ and recognizing that the project viability scores cannot predict the future.⁴

Other provisions of the Proposed Decision should be modified. With respect to the procurement of renewable resources located in the IV, CalWEA recommends that the Proposed Decision be modified to (1) extend specific monitoring of bids by Energy Division to bids from all renewable resources enabled by the Sunrise Powerlink Transmission Project ("Sunrise"), which consists of a much larger group than just those physically located in IV due to the manner in which electricity physically flows throughout the transmission system, and (2) clarify that San Diego Gas and Electric's ("SDG&E") commitment to replace existing contracts deliverable via Sunrise with contracts with renewable resources located in IV (a) remains subject to the same least-cost best-fit ("LCBF") bid evaluation requirements as any other contract, and (b) may be satisfied by entering into a contract with any renewable resource enabled by Sunrise.

With respect to project viability ("PV"), CalWEA recommends that the Proposed Decision be modified to (1) establish specific fixed weighting of PV categories, (2) explicitly recognize the contribution of the technology or technical viability category to overall PV, and (3)

¹ CalWEA recognizes that the current Renewables Portfolio Standard ("RPS") program provides that the state's IOUs may be subject to penalties for failure to meet their procurement goals. Given that these penalties are not automatically applied, however, they do not provide the necessary incentive. Ideally, the renewable energy procurement targets would be set with realistic levels and dates (e.g., when adequate transmission becomes available) and the penalties would be applied consistently and swiftly.

² Proposed Decision at 17-18.

³ Proposed Decision at 22.

⁴ Proposed Decision at 23.

direct the IOUs to amend their procurement plans to reduce current development security levels for projects with high PV scores.

Each of these recommendations is addressed in greater detail below.

II. ARGUMENT

A. The Proposed Decision Should Be Modified to Extend Sunrise-Related Preferences to All Renewable Resources Enabled by the Sunrise Project

CalWEA recognizes that the Proposed Decision acknowledges that "projects outside Imperial Valley may create significant flows on Sunrise" and appreciates the provision opening the special bidders conference to "any bidder within the region of the Western Electricity Coordinating Council whose project might create this type of important flow on Sunrise."⁵ For clarity, CalWEA recommends that this provision of the Proposed Decision be modified slightly to apply to any bidder whose project has its first point of interconnection within the Western Electricity Coordinating Council ("WECC") system, in recognition of the distinction between geographic boundaries and electrical impacts.

Unfortunately, an invitation to the special bidders conference alone is insufficient to ensure that the state's RPS goals are pursued on a least-cost basis and that undue geographic preferences are avoided. Accordingly, CalWEA recommends that the Proposed Decision be modified to (1) expand specific monitoring of bids to all renewable resources enabled by Sunrise, and (2) clarify that SDG&E's obligation to replace non-performing contracts with contracts with resources located in IV (a) remains subject to the same least-cost best-fit ("LCBF") bid evaluation requirements as any other contract, and (b) may be satisfied by entering into a contract with any renewable resource enabled by Sunrise.

⁵ Proposed Decision at 14.

i. Specific Monitoring Should Be Extended to All Renewable Resources Enabled by the Sunrise Project

The Proposed Decision should be modified to extend Energy Division's specific monitoring of bids from IV resources to include all bids from projects enabled by Sunrise. As noted in CalWEA's opening and reply comments, providing preferences to bidders based on their location contradicts the purpose of the LCBF bid evaluation requirements of Public Utilities Code Section 399.14(c)(B). Moreover, placing any artificial constraint on the market increases the risk of suboptimal achievement of the state's RPS policies, or failing to achieve RPS goals at all because they cannot be achieved within defined policy-cost limits.

To avoid such outcomes, CalWEA originally proposed that specific monitoring be expanded to include all bids from projects in the WECC system that would create significant flows over Sunrise, which could be determined through the use of shift factors. The Proposed Decision takes the position that the use of shift factors may be too complex, but nonetheless accepts that specific monitoring should be expanded to include other projects where the effects on Sunrise flows are sufficiently known relative to other projects.⁶ CalWEA's understanding is that the use of shift factors is a relatively common transmission planning tool. For ease of administration, however, CalWEA proposes that specific monitoring should apply to any bid from a project that (1) has a first point of interconnection to the grid within the WECC, and (2) is expected to create a "significant flow" on Sunrise as determined by SDG&E, provided that SDG&E should share the methodology and assumptions that it will use for determining whether a project creates a "significant flow" on Sunrise. At a minimum, all projects with a first point of interconnection along the Sunrise/Southwest Power Link ("SWPL") transmission corridor should be included - *i.e.*, any project with a first point of interconnection on the 500 kV transmission

⁶ Proposed Decision at 16.

system along the Sunrise/SWPL corridor, namely the proposed ECO Substation, the IV Substation, or the North Gila Substation, or any of the underlying lower voltage (230 kV and lower) transmission systems that connect to these three substations. The Sunrise/SWPL corridor would encompass IV resources as well.

Expansion of specific monitoring is necessary to support the substantial resources already under development that will likely produce significant flows over Sunrise. There are over 2,600 MW of proposed wind projects in Baja California that are in the transition cluster portion of the California Independent System Operator's ("CAISO") interconnection queue, with another 400 MW in the CAISO's nearer-term serial group. These resources, as well as renewable energy projects in San Diego County, are very likely to produce power flows on Sunrise that are essentially equal to those created by IV resources. To the extent the Commission intends to promote the development of all renewable resources enabled by Sunrise, and not just resources physically located in IV, the Proposed Decision should be revised to extend specific monitoring to bids from all projects interconnected along the Sunrise/SWPL corridor.

ii. SDG&E's Obligation to Replace Non-Performing Contracts With Resources Located in IV Should be Clarified

The Proposed Decision should be modified to clarify that SDG&E's obligation to replace non-performing contracts deliverable via Sunrise with contracts with renewable resources located in IV (a) remains subject to the same least-cost best-fit ("LCBF") requirements as any other contract, and (b) may be satisfied by entering into a contract with any renewable resource enabled by Sunrise.

(a) SDG&E Replacement Contracts Should Be Subject to the Same LCBF Standard as Other Contracts

SDG&E's commitment to replace current renewable contracts deliverable via Sunrise with contracts with renewable resources located in IV should not allow SDG&E to circumvent the LCBF process. The Proposed Decision notes that SDG&E's commitment "is important and binding."⁷ The Proposed Decision fails to indicate, however, whether there are limits to this binding obligation. By contrast, in addressing CalWEA's stated concern that specific monitoring of IV bids could create pressure to deviate from LCBF, the Proposed Decision states that the Commission "will reject advice letters seeking approval of contracts with [IV] projects if they are unreasonable."⁸ To avoid any ambiguity, the Proposed Decision should be revised to explicitly state that contracts with renewable resources in IV will be subject to the same LCBF standard as any other contract, and SDG&E's commitment does not modify or relax this requirement.

(b) Any Contract With A Renewable Resource Enabled by Sunrise Should Satisfy SDG&E's Commitment to Enter Into Replacement Contracts

The Proposed Decision repeats SDG&E's commitment to replace non-performing contracts deliverable via Sunrise with contracts with renewable resources located in IV and notes that this commitment is "important and binding."⁹ As noted in CalWEA's opening and reply comments, however, the electrons from a particular resource will not travel on an exclusive transmission path – resources located in IV will not exclusively travel over Sunrise, while electrons from non-IV resources located anywhere within a wide radius around IV may well travel on Sunrise. As a result, preferential treatment for IV resources would provide a

⁷ Proposed Decision at 19.

⁸ Proposed Decision at 16.

⁹ Proposed Decision at 19.

tremendous and unjustified competitive advantage to resources in a particular, but ultimately arbitrary, location. To avoid this result, the Proposed Decision should be modified to clarify that SDG&E's commitment can be satisfied by any contract with a renewable resource that is enabled by Sunrise (*i.e.*, interconnected along the Sunrise/SWPL corridor).

Likewise, the Proposed Decision should be modified to require that each host of a special bidders conference explain that SDG&E's commitment to replace contracts deliverable via Sunrise may be met by entering into a replacement contract with any resource enabled by Sunrise.¹⁰

B. The Proposed Decision Should Be Modified to Establish Specific Fixed Category Weightings For the PV Calculator and Reduced Development Security for Projects With High PV Scores

CalWEA has participated in Energy Division's development of the project viability calculator ("PVC") and recognizes the progress staff has achieved to date. Notwithstanding staff's progress, the Proposed Decision should be modified to (1) establish the specific fixed weighting of PV categories, (2) explicitly recognize the contribution of the technology or technical viability category to overall PV, and (3) direct the IOUs to amend their procurement plans to reduce the current development security levels for projects with high PV scores.

i. The Commission Should Establish Specific Fixed Project Viability Category Weightings

The Proposed Decision requires that the PVC contain at least three major categories "(a) developer experience; (b) technical viability; and (c) development milestones."¹¹ CalWEA supports this approach, but recommends that the Proposed Decision be modified to explicitly state that the PVC will include these three categories (and not more). Moreover, the Proposed

¹⁰ See Proposed Decision at 13.

¹¹ Proposed Decision at 22.

Decision should be modified to establish the specific fixed weightings to be applied to each of these categories.

The weighting of the three categories presents the single most important issue in connection with developing a useful PVC. This is because the relative weightings of the different categories may have a discriminatory effect. For example, if an IOU were to assign a weighting of twenty percent (20%) for "technical viability" and a weighting of sixty percent (60%) for "developer experience," then a project utilizing a rarely used technology could receive a higher PV score than a project using a technology with dozens of real-world applications simply because the management team developing the first project had slightly more experience. Such a result is counter-intuitive because the difference between 10 and 15 years of development experience is much less likely to impact the probability of successful development of a specific project than the difference between a technology with a proven track record and one with limited real-world application. To avoid such a result, the Proposed Decision should be modified to explicitly identify the three PVC categories and the specific fixed weightings assigned to each.

ii. Project Viability Category Weightings Should Recognize the Contribution of Technology to Overall Project Viability

In recognition of the high correlation between the use of proven generation technology and overall project viability, the technology or technical viability category should be weighted more heavily than any other consideration in the PV scoring. A project that 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. In addition, a project employing proven technology has a higher level of certainty with respect to installed cost and operating cost.

In contrast, 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. Thus, the technology or technical viability category should receive the highest weighting of the three categories.

iii. The IOUs Should Amend Their Procurement Plans to Reduce Current Development Security Levels for Projects With High PV Scores

The Proposed Decision should be modified to require the IOUs to amend their procurement plans to reduce the current level of development security required for projects with high PV scores. The Proposed Decision recognizes that reducing development security levels for projects with high PV scores provides incentives for developers to increase their project's viability.¹² Yet, the Proposed Decision declines to adopt staff's proposal, supported by CalWEA, to establish this link between PV scores and development security levels.¹³

In support of its conclusion, the Proposed Decision cites Southern California Edison's ("SCE") argument that development security is intended to offset replacement costs as a basis for requiring the same development security from two projects with different PV scores.¹⁴ This conclusion is inconsistent with the generally accepted economic principle of expected value.¹⁵ Development failure is an uncertain event. As such, the appropriate measure of exposure is the expected replacement cost, which is a function of both the probability of development failure and the cost to replace the contract in the event such failure occurs. In the example used in the

¹² Proposed Decision at 25.

¹³ *Id.*

¹⁴ Proposed Decision at 26.

¹⁵ *See, e.g.,* Stephen G. Marks & William F. Samuelson, *Managerial Economics* 548-49 (3d ed. 1999).

Proposed Decision, two projects "with different viability scores but similar output characteristics" may indeed have similar replacement costs, but the differing PV scores indicate differing probabilities of development failure, and thus differing expected replacement costs.¹⁶ Given that the utility's risk of incurring replacement costs decreases as the PV score increases, requiring reduced development security levels for projects with high PV scores is entirely consistent with the concept of development security as a hedge against replacement costs.

The Proposed Decision also cites the Pacific Gas and Electric ("PG&E") argument that the purpose of development security is to provide a disincentive to breach in support of its decision to reject staff's proposal.¹⁷ As PG&E suggests, development security does provide a disincentive to intentional breach by Seller. It also, however, presents an impediment to development. Developers incur costs to obtain development security that have to be paid by the sponsor, and these costs can be significant, particularly if the developer is required to cash-collateralize the security. The funds that are used to provide this development security could otherwise be used in the project development process, perhaps even to increase the viability of the project. In addition, the IOUs have other contractual methods available to address intentional breach concerns that do not require tying up excessive amounts of capital. Accordingly, the Proposed Decision should be revised to implement staff's proposal to reduce the current development security levels for projects with high PV scores.

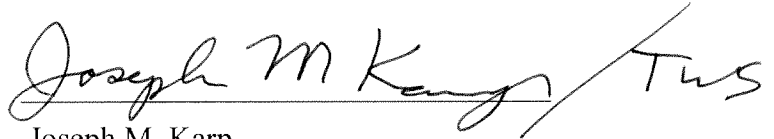
¹⁶ Proposed Decision at 26.

¹⁷ *Id.*

III. CONCLUSION

For the reasons set forth above, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,

Handwritten signature of Joseph M. Karp and Thomas W. Solomon. The signature is written in cursive and includes the initials 'TWS' at the end.

Joseph M. Karp
Thomas W. Solomon
Winston & Strawn LLP
101 California Street, 39th Floor
San Francisco, California 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
Email: jkarp@winston.com
tsolomon@winston.com

*Attorneys for the California Wind Energy
Association.*

May 21, 2009

Appendix A: Proposed Findings Of Fact And Conclusions Of Law

I. The following Findings of Fact in the Proposed Decision should be changed as set forth below:

2. A special Imperial Valley bidders conference will highlight the unique opportunities created by Sunrise, is expected to increase both the number and viability of proposed projects, and should be open to, and welcome, any bidder whose first point of interconnection is within the WECC system and whose project may create significant flows on Sunrise.

4. Specific subjects must be included in the special bidders conference to highlight the special importance and unique expectations relative to renewable resources enabled by Sunrise.

5. Specific monitoring of bids from all projects with a first point of interconnection along the Sunrise/SWPL transmission corridor (*i.e.*, any project with a first point of interconnection on the 500 kV transmission system along the Sunrise/SWPL corridor, namely the proposed ECO Substation, the IV Substation, or the North Gila Substation, or any of the underlying lower voltage (230 kV and lower) transmission systems that connect to these three substations, which includes IV resources) is consistent with Sunrise being a relatively important and costly project in California, and deserving reasonable attention to ensure that it is used efficiently, equitably, and wisely.

II. The following new Findings of Fact should be added:

28. "Commission-established project viability categories and specific fixed percentages are necessary to ensure non-discriminatory project viability evaluation."

29. "SDG&E has committed to replace non-performing contracts deliverable via Sunrise with contracts with renewable resources located in IV."

III. The following Conclusions of Law in the Proposed Decision should be changed as set forth below:

Conclusion of Law 7. Bids from all projects with a first point of interconnection along the Sunrise/SWPL transmission corridor (*i.e.*, any project with a first point of interconnection on the

500 kV transmission system along the Sunrise/SWPL corridor, namely the proposed ECO Substation, the IV Substation, or the North Gila Substation, or any of the underlying lower voltage (230 kV and lower) transmission systems that connect to these three substations, which includes IV resources) should be monitored, and the IOUs (PG&E, SCE, SDG&E) should provide specific information to Energy Division (when requested by Energy Division).

Conclusion of Law 9. Each IOU should include an improved project viability methodology and calculator with its amended Plan, as specified by Energy Division; provided that the project viability calculator shall include three major categories (developer experience, technical viability, and development milestones) with the specific fixed weighting of each category to be established by the Commission.

Conclusion of Law 12. Development security amounts should be reduced from their current levels for projects with high project viability scores.

IV. The following new Conclusions of Law should be added:

Conclusion of Law 36. "Any replacement contract entered into by SDG&E pursuant to its commitment to replace non-performing contracts deliverable via Sunrise with contracts with renewable resources located in IV will be subject to the same LCBF requirements as any other contract."

Conclusion of Law 37. "SDG&E's commitment to replace non-performing contracts deliverable via Sunrise with contracts with renewable resources located in IV can be satisfied by any contract with a renewable resource that is enabled by Sunrise (*i.e.*, interconnected along the Sunrise/SWPL corridor)."

VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the California Wind Energy Association on Proposed Decision Conditionally Accepting 2009 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Supplements* are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on May 21, 2009 at Berkeley, California.



Nancy Rader

Executive Director, California Wind Energy Association

Certificate of Service

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

**COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION
ON PROPOSED DECISION CONDITIONALLY ACCEPTING 2009 RENEWABLES
PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED
RESOURCE PLAN SUPPLEMENTS**

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 21, 2009, at San Francisco, California.



Sallie Lopes