

**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)

**REPLY COMMENTS OF THE CALIFORNIA WIND  
ENERGY ASSOCIATION ON THE PROPOSALS AND ISSUES  
RELATED TO RENEWABLE DEVELOPMENT IN IMPERIAL VALLEY  
AND EVALUATION OF RENEWABLE PROJECT VIABILITY**

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March 6, 2009

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**I. INTRODUCTION**

Pursuant to the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the *Assigned Commissioner's Ruling Regarding Potential Renewables Portfolio Standard Development in Imperial Valley and Evaluation of Renewable Procurement Contracts* ("ACR") filed February 3, 2009, and the *Administrative Law Judge's Ruling Extending Time for Comments and Reply Comments* filed February 9, 2009, the California Wind Energy Association ("CalWEA") respectfully submits these reply comments to the comments of other parties on the proposals and issues identified in the ACR.

In comments relating to promoting renewables development in Imperial Valley, CalWEA encouraged the Commission to avoid promoting resources in a way that conflicts with least-cost/best fit achievement of RPS goals or, at a minimum, provides any preference based on actual use of proposed transmission lines rather than the location of resources. In these reply comments, CalWEA responds to suggestions that preferences should be based on resource location.

In comments relating to the evaluation of project viability, CalWEA set forth a series of principles that should guide the development of project viability evaluation. In these reply

comments, CalWEA responds to specific examples of comments submitted by other parties that are inconsistent with these general principles. Specifically, CalWEA requests that the Commission reject (i) the proposed "developer commitment" criterion as being insufficiently related to project viability, (ii) Southern California Edison Company's ("SCE") request that the weighting of the project viability criteria be kept confidential as inconsistent with the goal of project viability scoring transparency, and (iii) the SCE and Pacific Gas and Electric Company ("PG&E") position that current development security levels should not be reduced for projects with high project viability scores as inconsistent with the goal of providing incentives for comparatively viable projects. Each of these issues is addressed in greater detail below.

## **II. ARGUMENT**

### **A. Proposals Regarding Imperial Valley Development**

Several parties provided excellent reasons for avoiding special preferences or costly and unnecessary procedures to encourage resources in the Imperial Valley. CalWEA agrees with L. Jan Reid ("Reid"), for example, that the proposed remedial measures are inconsistent with Public Utilities Code Sections 451 and 454 and will send the wrong message to renewables developers in other parts of the state. Reid and SCE correctly underscore the fact that providing preferences to bidders based on their location contradicts the purpose of the least-cost/best-fit bid evaluation requirements of Public Utilities Code Section 399.14(c)(B).

PG&E and SCE correctly note that transmission availability is already considered in the RPS bid evaluation process and substantially improves the likelihood that bids with transmission availability will be successful. However, SCE suggests<sup>1</sup> that the bid evaluation benefit should be limited to projects "in areas with approved transmission projects" such as the Tehachapi and Sunrise transmission projects. As CalWEA's opening comments argued, a generation facility

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<sup>1</sup> SCE comments at p. 10.

need not be proximate to the planned transmission project for the project to facilitate delivery of the generator's output. The criterion should be whether and when the project will be able to deliver its power in a substantial fashion based on proper power flow evaluation criteria.

Similarly, San Diego Gas and Electric Company ("SDG&E")<sup>2</sup> urges the Commission to clarify that all renewable resources facilitated by Sunrise -- specifically, in addition to Imperial County, those in the eastern half of San Diego County and northern Mexico -- should be included in any preference policies. While expanding the geographic region within which projects will be preferred would be less objectionable than a narrower region, if the point is to encourage usage of Sunrise, usage should be measured directly as CalWEA's opening comments outlined: by looking at the power flows on the line, not the location of the generator.

The most appropriate course, however, as SCE, PG&E, Reid, and CalWEA have argued, is for the Commission to avoid providing undue preference for any particular group of resources at the expense of achieving the state's renewable energy goals at least-cost/greatest-value. Placing artificial constraints on the market will produce suboptimal achievement of the state's policies. Instead, the focus should be on further developing the transmission system to enable an unconstrained, competitive market for renewables while strengthening the grid overall.

## **B. Project Viability Evaluation Principles**

### **i. "Developer Commitment" Should Not Be A Project Viability Scoring Criterion**

Both Stirling Energy Systems ("Stirling") and the Large-scale Solar Association ("LSA") propose that a new section be added to the Project Viability Calculator to account for (1) whether permit applications have been filed, (2) whether the Application for Certification ("AFC") is data

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<sup>2</sup> SDG&E comments at p. 8.

adequate (or equivalent for non-CEC permits), (3) dollars spent on permitting, land acquisition, etc., and (4) total dollars spent on the project.<sup>3</sup> LSA further suggests that "the most accurate viability factor is developer commitment."<sup>4</sup> The Commission should reject this suggestion because "developer commitment," as described by LSA/Stirling, is not sufficiently related to the project development process.

In initial comments, CalWEA noted that the project viability criteria should be clearly related to the project development process because project viability scores are intended to reflect the probability a project will achieve commercial operation. The LSA/Stirling suggestion that a "developer commitment" criterion be added to the project viability scoring system is inconsistent with this principle because expending large sums of money does not mean a project is more likely to achieve commercial operation. In fact, it may simply mean that the project is comparatively expensive (due to substantial transmission upgrades, environmental mitigation, etc.). The need to expend large sums of money to overcome such project development hurdles may actually be an indication that the project is comparatively less viable. Because the amount of money spent by a developer could simply mean that the project is expensive, the Commission should reject the proposed addition of a "developer commitment" criterion.

**ii. The Weighting of Project Viability Criteria Must Be Disclosed to Bidders to Maintain Transparency**

SCE states that it "does not object to publicly disclosing the attributes it takes into account in evaluating project viability," but then further states that "the specific weightings given to each criteria [sic] should remain confidential."<sup>5</sup> The Commission should reject this suggestion because disclosure of the weighting of project viability criteria is necessary to provide

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<sup>3</sup> See Stirling Comments at p. 6; LSA Comments at p. 6.

<sup>4</sup> LSA Comments at p. 6.

<sup>5</sup> See SCE Comments at p. 15.

transparency (and thus clear signals to the market) as well as to ensure a fair and reasonable scoring methodology.

SCE's proposal to keep project viability criteria weighting confidential is counter to the goal of transparency and obscures market signals. Holding a list of criteria, without knowledge of the relative importance of those criteria, leaves developers without signals to which they can respond. For example, a developer could obtain site control and have its primary generating equipment on hand, and then have its bid rejected because the investor-owned utility ("IOU") placed a 99% weighting on permitting issues. In contrast, a developer with knowledge that an IOU values favorable permitting status twice as much as having primary generating equipment on hand could choose to increase the probability of being selected in the solicitation by reallocating funds from the purchase of generating equipment to the pursuit of permits. Such a result increases market efficiency by allocating limited resources (cash) to their highest use (here, pursuit of permits). This outcome leaves both parties in a better position – the IOU has access to a project that it perceives as having increased value, and the developer increases the likelihood of having its bid short-listed. To achieve this result, however, the weighting must be transparent to provide the proper market signal. SCE's suggestion to keep project viability criteria weighting confidential would do the exact opposite and obscure market signals. Therefore, the Commission should reject SCE's proposal.

Moreover, transparent project viability criteria are necessary to ensure the scoring is fair and reasonable. As CalWEA noted in its initial comments, improper weighting of project viability criteria has the potential to create unduly discriminatory effects. CalWEA also provided an example where an IOU could utilize weightings that would lead to higher project viability scores for projects employing unproven technologies than projects employing proven

technologies, simply because the first project was under development by a management team with marginally more development experience. To reduce the potential for such an outcome, and to provide proper oversight of the project viability evaluation process, the weighting of project viability criteria must be disclosed. Accordingly, the Commission should reject SCE's suggestion to keep the weighting confidential.

**iii. The IOUs Should Reduce Current Development Security Levels for Projects With High Project Viability Scores**

In comments, both SCE and PG&E take the position that existing development security requirements should not be reduced for projects with high project viability scores. The Commission should reject the PG&E and SCE position because (i) the IOUs can address their concerns through other means and (ii) differentiated development security levels provide an incentive to maximize project viability scores.

SCE states that "the function of development security is to offset the replacement costs of a project that has failed."<sup>6</sup> SCE further claims that tying development security to viability "will unfairly benefit larger, more established companies," and suggests that "one can make a case for reverse development security differentiation" because established companies will develop large projects that have higher replacement costs.<sup>7</sup> Contrary to SCE's assertion, development security is not designed to cover replacement costs. Assuming it were, however, requiring reduced development security levels for projects with high project viability scores would be perfectly logical because these projects would be less likely to fail (making the replacement costs less likely to materialize). Thus, the Commission should reject SCE's position.

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<sup>6</sup> SCE Comments at pp. 17-18.

<sup>7</sup> *Id.*

PG&E states that the "purpose of the seller's security is to encourage the development to reach commercial operation date and deliver on schedule," which encouragement takes the form of "a financial incentive to discourage the seller from pursuing an economic alternative to performing under the PPA."<sup>8</sup> As PG&E suggests, development security does provide a disincentive to seller non-performance. Still, this is not inconsistent with linking project viability scores and development security levels because any development security requirement (even at a reduced level) provides the desired disincentive to breach. Additionally, PG&E, as well as the other IOUS, has other contractual methods to address this issue without tying up excessive amounts of capital and erecting barriers to development. Thus, the Commission should reject PG&E's position.

Providing differentiated development security levels, on the other hand, creates an economic incentive for developers to maximize their project viability scores. By requiring that the amount of development security be linked to the project's viability score, the Commission will 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.

Because SCE and PG&E have other mechanisms available to address their concerns and requiring reduced development security levels for projects with high project viability scores provides an incentive for developers to increase project viability, the Commission should reject the SCE and PG&E position that existing development security levels should remain intact.

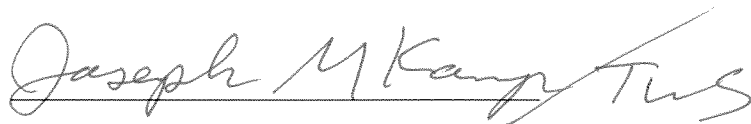
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<sup>8</sup> See PG&E Comments at p. 13.

### III. CONCLUSION

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph M. Karp" followed by a flourish.

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March 6, 2009

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## 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 *Reply Comments of the California Wind Energy Association on the Proposals and Issues Related to Renewable Development in Imperial Valley and Evaluation of Renewable Project Viability* 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 March 6, 2009 at Berkeley, California.



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Nancy Rader

Executive Director, California Wind Energy Association

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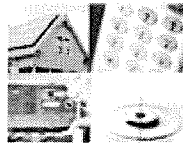
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Executed on March 6, 2009, at San Francisco, California.



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