BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Continued Implementation of the Public Utility Regulatory Policies Act and Related Matters.	Rulemaking 18-07-017

COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND SOLAR ELECTRIC SOLUTIONS, LLC, ON PROPOSED DECISION ADOPTING A NEW STANDARD OFFER CONTRACT FOR QUALIFYING FACILITIES OF 20 MEGAWATTS OR LESS PURSUANT TO THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

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For Solar Electric Solutions, LLC

April 23, 2020

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I. INTRODUCTION & SUMMARY

Pursuant to the Proposed Decision of Administrative Law Judge Peter Allen issued on April 3, 2020, and Rule 14.3 of the Commission's Rules of Practice and Procedure, the California Wind Energy Association ("CalWEA") and Solar Electric Solutions, LLC ("SES")[1] respectfully submit these opening comments on the *Proposed Decision Adopting a New Standard Offer Contract for Qualifying Facilities of 20 Megawatts or Less Pursuant to the Public Utility Regulatory Policies Act of 1978* ("Proposed Decision" or "PD").

In summary, CalWEA and SES urge the Commission to revise the Proposed Decision to conform to the terms outlined in the Joint Proposal put forward by the Investor Owned Utilities ("IOUs") and the Qualifying Facility Parties on November 14, 2018 ("Joint Proposal").

II. COMMENTS

CalWEA and SES agree with important aspects of the Proposed Decision, including:

- The conclusion that "the law is clear that state regulators have a great deal of discretion in determining avoided costs under PURPA" and that "states have discretion to determine the term of a QF contract when implementing PURPA." (PD at pp. 19 and 55.)

- The finding that historical CAISO locational marginal energy prices calculated on a monthly basis (with periods based on the Commission's most recently approved time-of-

[1] Pursuant to Rule 1.8(d), CalWEA confirms that Solar Electric Solutions, LLC, has authorized CalWEA to file these comments on its behalf.

use periods specific to a utility, and a collar based on prices at the relevant Energy Trading Hub) may be a reasonable proxy for establishing avoided energy costs.

- The finding that capacity pricing can reasonably be based on Energy Division's assessment of future payments for net qualifying capacity to meet a load serving entity's RA obligation at the time of contract execution; and
- The adoption of cost-allocation provisions, which would appropriately spread the cost of this PURPA program among all commission-jurisdictional load-serving entities.

The above elements of the Proposed Decision were important provisions of the Joint Proposal, which was carefully constructed by a number of disparate parties. The Proposed Decision, however, upsets that careful construction, which was narrowly focused on remedying the deficiencies in the Commission's implementation of PURPA cited in the Northern District Court's *Winding Creek Solar* ("*WCS*") decision: namely, failure to provide QFs the option to choose energy rates at the time of contract execution or at the time of product delivery. In adopting the Joint Proposal, the Commission should deem it to be an interim decision pending a ruling by the Federal Energy Regulatory Commission ("FERC") on PURPA policies for the future, given that FERC is currently contemplating both the need for fixed rates and any specific term length, and the relationship between the two.[2] Indeed, in addition to the parties to the Joint Proposal, both TURN and the Public Advocates Office supported the Joint Proposal as an interim, non-precedential resolution of the *WCS* issues. (PD at p. 12)

The Joint Proposal satisfies the *WCS* decision's stated deficiency by establishing a fixed price based on three-year historical pricing that is simple and transparent. CalWEA and SES continue to believe that the Joint Proposal represents a reasonable agreement between parties with differing legal positions that addresses all commercial aspects of a new PURPA contract that is compliant with the *WCS* decision.

The Proposed Decision would establish requirements that are both inconsistent with the Joint Proposal and inconsistent with the requirements of PURPA. Specifically, using a five-year-historical pricing methodology in the context of 7- and 12-year contracts is not reasonable and is almost guaranteed not to reflect avoided cost for 12 years, particularly in an energy market

[2] FERC NOPR published on October 4, 2019 (see, e.g., Paragraphs 65 and 77). *See Qualifying Facilities Rates and Requirements; Implementation Policies Under the Public Utilities Regulatory Policies Act of 1978*, 168 FERC ¶ 61,184 (2019).

that has been rapidly changing. By year 12, one-fifth of the pricing determinant will be 17 years old. By contrast, the Joint Proposal included a three-year historical average price to be paid for a maximum of just three years as a reasonable interim compromise among the diverse parties.

CalWEA and SES strongly agree with the statement in the PD that the Commission's long history of pro-actively embracing PURPA implementation launched the nation's first independent renewable energy and cogeneration projects during the 1980s, and laid the foundation for the success of the Renewables Portfolio Standard ("RPS") policy that is currently driving the electricity sector's achievement of the state's greenhouse-gas reduction goals. But the historic importance of the PURPA program is no reason to advance a new long-term standard offer contract on a weak foundation.

Moreover, it is important to recognize that the PD's proposed implementation of PURPA would be at odds with the Commission's Integrated Resource Planning ("IRP") process, initiated in 2016. The IRP process considers all resource options on a long-term, total-cost basis to develop an optimal portfolio that achieves the state's GHG, reliability and other planning objectives at least cost. Load-serving entities' individual procurement plans must conform to the Commission's adopted portfolio. A poorly conceived long-term PURPA contract based on historical pricing, rather than pricing derived from the IRP process, could undermine IRP goals if it enables the unchecked subscription of resources due to relatively generous pricing.

While the ReMAT program must be technically authorized under PURPA, its goal is to promote a segment of the market -- projects under 3 MW -- that would otherwise have difficulty competing in the RPS marketplace. However, unlike the PURPA contracts that the Proposed Decision would require the IOUs to offer, ReMAT is a limited program with a total capacity of 750 MW,[3] allocated among diverse resources, of which only 200 MW remain unsubscribed. The ReMAT program has been closed for two years, however, as a result of the *WCS* decision, causing major and expanding damage to public and private stakeholders that make up the wholesale distributed generation market segment and frustrating California's policy and environmental objectives.

CalWEA and SES therefore urge the Commission to modify the Proposed Decision to conform to the Joint Proposal, which, by resolving the Northern District Court's concern, will

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[3] Public Utilities Code Section 399.20.

enable the Commission's ReMAT program to resume. The Commission may deem it an interim decision pending a ruling by FERC on PURPA policies for the future.

III. CONCLUSION

For these reasons, CalWEA and SES urge the Commission to modify the Proposed Decision to conform to the Joint Proposal, and subsequently to expeditiously take necessary actions to enable the ReMAT program to resume.

Respectfully submitted,

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On behalf of the California Wind Energy Association and Solar Electric Solutions, LLC

April 23, 2020

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 and Solar Electric Solutions, LLC, on Proposed Decision Adopting a New Standard Offer Contract for Qualifying Facilities of 20 Megawatts or Less Pursuant to the Public Utility Regulatory Policies Act of 1978" 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 April 23, 2020, at Berkeley, California.

/s/ *Nancy Rader*
Nancy Rader
Executive Director
California Wind Energy Association