

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue  
Implementation and Administration, and Consider  
Further Development of, California Renewables  
Portfolio Standard Program.

Rulemaking 15-02-020  
(Filed February 26, 2015)

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION ON THE 2015 RENEWABLES PORTFOLIO  
STANDARD PROCUREMENT PLANS**

**INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION**

Steven Kelly, Policy Director  
1215 K Street, Suite 900  
Sacramento, CA 95814  
Telephone: (916) 448-9499  
Facsimile: (916) 448-0182  
Email: steven@iepa.com

**GOODIN, MACBRIDE,  
SQUERI & DAY, LLP**

Brian T. Cragg  
505 Sansome Street, Suite 900  
San Francisco, California 94111  
Telephone: (415) 392-7900  
Facsimile: (415) 398-4321  
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers  
Association

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The Independent Energy Producers Association (IEP) offers its comments on the draft 2015 Renewables Portfolio Standard (RPS) Standard Procurement Plans submitted August 4, 2015 by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

**I. GENERAL COMMENTS**

**A. Don't Fix What Isn't Broken**

The utilities' recent RPS solicitations have been successful. The utilities report receiving a multitude of offers and as a result the utilities are able to procure RPS-eligible energy at competitive prices. In light of this experience, the Commission should review proposed changes to the RPS Procurement Plans with the objective of making changes where the incremental value is proven and with a full consideration of the risk of unintended consequences when changes are made. IEP recommends that the Commission review utility-proposed changes to the status quo, particularly if not required by statute or changes in rules, in their full context,

weighing the benefit to the utility/buyer, the cost to the bidder/seller, and the inherent risk that negative unintended consequences will arise in the pursuit of small marginal benefits.

**B. Least-Cost/Best-Fit (LCBF) Bid Evaluation Methodology: Pairing Renewables with Storage**

While the Commission has initiated a separate proceeding to consider the procurement of storage resources, the RPS procurement is an opportunity to directly pair storage with eligible renewable resources. To the extent that storage can be paired with an RPS-eligible resource in a RPS bid and approved by the Commission, then that storage resource should count toward the utilities' storage procurement goals. However, for this benefit to be realized, the utilities' RPS LCBF bid evaluation methodology must explicitly consider this combination, and bidders need to understand generally how the added benefit of storage paired with a renewable resource will be valued by the utility. While PG&E suggests that it welcomes storage paired with renewables, it is not clear that the other utilities are similarly inclined. Moreover, bidders are not made aware of the extent to which storage will be incrementally valued in RPS procurement. As a result of not knowing whether and how a paired storage attribute will be considered in an RPS RFO, prospective bidders will conclude that a relatively higher cost RPS/storage project would lose in competition against a RPS-only resource and, therefore, will not bid the RPS/storage project.

IEP recommends that the utilities should be directed to modify their RPS Procurement Plans to allow bids for resources that pair storage directly with renewables. Furthermore, the utilities should be directed to clarify how their LCBF bid evaluation methodologies will fully value storage attributes that are paired directly with renewable resources.

**C. Consideration of a Higher RPS Requirement: 33% Is a Floor and Not a Ceiling**

As directed by the Assigned Commissioner's Ruling (ACR) dated May 28, 2015, all draft 2015 RPS Procurement Plans should include responses to the Specific Requirements for 2015 Procurement Plans set forth in the ACR, considering and RPS requirement of both 33% by 2020 and 40% by 2024. IEP notes, however, that consistent with the legislative direction of AB 327, the 33% by 2020 is a *minimum* requirement, *i.e.*, the 33% goal is a floor and not a ceiling on RPS procurement.<sup>1</sup> Moreover, in light of the Governor's Executive Order B-30-15, which imposed a new interim statewide greenhouse gas emission reduction target of 40% below 1990 levels by 2030, even the 40% RPS target should be considered a minimum goal if cost-effective renewable energy resources are available.

The Commission should direct the utilities to modify their RPS Procurement Plans to treat the 33% obligation and the 2024 40% target as minimum procurement levels from a planning and procurement perspective. The Commission also should clarify that the utilities have the authority to procure RPS energy in amounts exceeding these levels to the extent that additional resources are cost-effective.

**II. SPECIFIC COMMENTS RELATED TO UTILITIES' DRAFT 2015 RPS PROCUREMENT PLANS**

In addition to the general comments provided above, IEP offers the following comments on the draft 2015 RPS Procurement Plan filed by each of the utilities.

**A. PG&E's Draft 2015 RPS Procurement Plan**

PG&E does not plan to conduct a RPS Request for Offers (RFO) in 2015. PG&E projects that under both the 33% RPS by 2020 target and the 40% by 2024 scenario, it is well positioned to meet its RPS compliance requirement for the second (2014-2016) and third (2017-

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<sup>1</sup> Pub. Util. Code § 399.15(b)(3).

2020) compliance periods. Further, PG&E projects that it will not have a need for incremental RPS procurement until at least 2022.

PG&E proposes few changes to its 2014 RPS Procurement Plan, presumably because it does not propose to procure any RPS resources under the 2015 RPS Procurement Plan. As a result, IEP's comments on PG&E's draft 2015 RPS Procurement Plan are limited to PG&E's RPS Net Short. IEP recommends that the Commission should consider PG&E's conclusion that it has no current need for RPS procurement in light of the Governor's Executive Order B- 30-15. While IEP is not advocating that PG&E should be required to conduct an RPS RFO if it has no intention of procuring any resources, the 2020 33% RPS goal is a *minimum* target, as noted above. To the extent that cost-effective renewables are available, and in light of the growing need for additional renewables to meet future GHG emission reduction goals, forgoing any opportunity to consider bids from RPS-eligible projects in 2015-2016 appears inconsistent with the policy direction implied by the Governor's Executive Order B- 30-15.

**B. SCE's Draft 2015 RPS Procurement Plan**

SCE plans to conduct an RPS RFO to meet future, short-term need. In this context, SCE has proposed a number of changes in its draft 2015 RPS Procurement Plan. IEP addresses the following selected issues:

- 1. Treatment of Renewable Distributed Generation, including Behind-the-Meter Generation (pp. 6-7).** SCE seeks to allow non-metered energy from renewable distributed generation (DG) to count towards the state's RPS goals. Currently, consistent with the Commission's Net Energy Metering (NEM) Decision 11-06-016, renewable energy credits (RECs) from renewable DG are eligible to count toward RPS goals if the energy is metered consistent with the accounting and tracking system (currently the

Western Renewable Energy Generation Information System (WREGIS)) approved by the California Energy Commission (CEC). SCE alleges that various administrative and economic hurdles impair the ability of these DG resources to count toward the utility's RPS obligations, primarily due to the rules related to meter quality to ensure the integrity and accuracy of REC accounting. As a result, SCE seeks to relax the metering and tracking obligations associated with REC creation for DG resources.

IEP opposes SCE's proposal. Metering quality and integrity is critical to public acceptance of renewable investments. Moreover, the cost of installing meters that meet the CEC/WREGIS standards are relatively low (according to SCE, "hundreds of dollars") relative to the cost of the overall distributed solar system. The additional cost, if any, to ensure and maintain the quality of the California RPS is modest, and well worth it to help preserve the integrity of the RPS counting/tracking program.

- 2. Banking Short-term Projects (pp. 7-8).** Currently, utilities are prohibited from banking short-term products associated with contracts of less than 10 years in duration. SCE alleges that the banking rules harm customers of load-serving entities that wish to go above and beyond current RPS targets. Accordingly, SCE seeks relaxation of the banking rules related to short-term contracts, including short-term unbundled REC transactions (*i.e.*, Portfolio Content Category 3 (PCC-3)).

To the extent that load-serving entities voluntarily commit to procure renewables that exceed the RPS floor (currently 33%) or a

Commission authorization (*e.g.*, 40%), consideration of relaxing the banking rules for RECs associated with short term PCC-1 transactions (“bundled”) and PCC-2 transactions (“firmed and shaped”) could be considered. However, proposals to relax the existing banking constraints for RECs associated with PCC-3 products (“unbundled RECs”) are unwarranted. Both PCC-1 and PCC-2 transactions, by definition and rule, suggest a direct linkage between generation produced from an eligible renewable resource and delivery of energy to the California consumer. On the other hand, PCC-3 transactions sever this generation/delivery nexus and, as a result, these transactions do not deserve consideration under the banking provisions. IEP urges the Commission to not authorize banking of RECs associated with PCC-3 products.

3. **Curtailed and RPS Counting (pp. 10-11).** SCE recommends that curtailed renewable energy paid for by a load-serving entity (LSE) should count towards RPS targets on or after January 1, 2021.

IEP opposes SCE’s proposal to count curtailed energy against a load-serving entity’s RPS obligation. First, enabling an LSE to count curtailed energy could affect the LSE’s procurement and scheduling behavior. For example, if an LSE knows that it may curtail renewable resources and still count the curtailed energy against its RPS obligations, then it will have no incentive to manage its procurement practices or to schedule resources for which it serves as Scheduling Coordinator to minimize the risk of curtailment. Second, as a practical matter, curtailed

renewable production does not create a REC, since the REC is created when energy actually produced is metered and delivered to the electric grid. Thus, SCE's proposal to count curtailed renewable production also has the effect of undermining the integrity of the tracking and accounting system established by the CEC and implemented by WREGIS that is the foundation for California's RPS program.

4. **Economic Curtailment (pp. 24-25).** SCE proposes to eliminate the "pre-paid" option implemented in 2014. SCE proposes to retain its right to curtail at its discretion, but SCE will pay sellers for economic curtailments directly resulting from SCE marketing decisions. On the other hand, consistent with current practice, SCE will not pay for curtailments required in response to emergencies or directed by the CAISO or transmission provider.

IEP supports SCE's approach regarding economic curtailments.

5. **10-year Contract Bid Requirement (p. 54).** SCE proposes to impose on RPS bidders an obligation to submit, for each project, at least one bid with a contract term of 10 years.

IEP opposes SCE's proposal. Imposing a requirement to submit at a minimum one bid per project with a contract term of 10 years serves no meaningful purpose. The proposal, if adopted, would only serve to constrain the marketplace (*e.g.*, eliminating otherwise competitive bidders unable to accept a 10-year term at any price). Because SCE proposes to allow bidders to submit up to eight bids per project, SCE will have more

than sufficient information to determine price points for various contract terms and durations. Imposing an obligation on the bidders to develop and propose at least one 10-year term contract is a misuse of bidders' time and resources.

**6. Shortlist Exclusivity (pp. 58-59).** SCE proposes to require sellers to execute an exclusivity agreement with respect to shortlisted projects.

IEP opposes any proposal to require bidders to execute exclusivity agreements. IEP notes that the Commission has rejected utility proposals for exclusivity agreements in the past for many valid and logical reasons. Given that the California RPS market is characterized by many sellers but relatively few buyers, requiring bidders to execute exclusivity agreements, even if limited to shortlisted projects, results in an arbitrary and unnecessary restraint on competition. Almost by definition, not all shortlisted projects will be selected for a contract, and binding bidders to one buyer for a shortlisted project forecloses the project from the opportunity to enter into a contract with another entity. IEP notes that the time between the selection of shortlisted projects and final Commission approval of a contract can be a year or more. Moreover, no evidence exists to suggest that the constraints imposed on bidders by an exclusivity agreement produce any better projects or contractual arrangements for ratepayers.

7. **Elimination of Startup and Initial Synchronization Periods (pp. 60-61).** SCE proposes to eliminate any obligation to pay for energy produced during the startup period and initial synchronization period.

IEP opposes SCE's proposal. Because the 33% RPS is a floor and not a ceiling, any energy received by SCE during the startup period and initial synchronization period helps SCE meet its RPS goals. However, SCE should not be entitled to receive this RPS-eligible energy including the REC without appropriate compensation. The reality is that many large RPS projects are developed in stages, and this proposal would have a significant negative effect on staged projects. Typically, these projects operate very predictably as they come on-line, and SCE's argument to take delivery yet not pay for the energy and associated REC during startup is unreasonable. SCE's proposal will simply drive up the costs of grid-connected utility-scale renewables unnecessarily.

8. **Financial Consolidation (pp. 61-62).** SCE proposes to incorporate language into its 2015 *Pro Forma* contract that will obligate sellers to provide SCE with financial statements in order to include projects' information in SCE's financial filings for the Securities and Exchange Commission in the event that SCE must consolidate any entity in which it has a controlling interest.

IEP opposes SCE's proposal. SCE acknowledges that it has never been required to consolidate sellers under RPS contracts in its financial statements. To impose such a significant reporting requirement on the

operator in response to a very low (almost nonexistent) risk that SCE *might* be subject to consolidation requirements at some uncertain future point is not justified.

9. **No Return of Development Security (pp. 62-63).** SCE proposes to retain 100% of the development security if a project misses its commercial operation date (COD) due to an inability to obtain material permits. SCE alleges that this proposal will make for a better shortlist.

IEP opposes SCE's proposal. As a practical matter, permitting progress is in many key respects beyond the control of the developer. The Commission spent an extensive amount of time integrating the concept of "project viability" into bid evaluation, and, as a result, the utilities currently employ a number of tools to identify and evaluate the risk of delayed permitting as part of bid evaluation, selection, and approval. For example, projects cannot be bid unless they have completed a Phase II Interconnection Study, which helps identify the need for material permits and quantifies the costs of interconnection. Moreover, as a component of the Project Viability Calculator, the utilities specifically assess a project's "progress toward completion," including the consideration of permitting status and development progress. Thus, imposing a new risk factor such as losing a project's Development Security due to the failure to timely obtain material permits is unlikely to create any additional incentive for a project developer to obtain material permits as quickly as possible.

**10. Posting of Development Security (pp. 63-64).** SCE proposes to require sellers to post 100% of their Development Security upon power purchase agreement (PPA) execution. Historically, SCE has required sellers to post 50% of their Development Security within 30 days of PPA execution. The remaining 50% of the Development Security was required to be posted within 30 days of Commission approval of the PPA.

IEP opposes SCE's proposal. There is no evidence that imposing a higher security burden on Sellers will reduce, let alone eliminate, the risk of default that SCE believes this change will cure. Moreover, increasing the security obligation will simply increase the risk premium that is factored into bids.

**C. SDG&E's Draft 2015 RPS Procurement Plan**

SDG&E indicates that it may conduct an RPS RFO. As a result, SDG&E has proposed a number of changes in its draft 2015 RPS Procurement Plan. IEP addresses issues of concern below.

**1. Restrain Generation Output (pp. 25-28).** SDG&E alleges that sellers are "overbuilding" their facilities, *i.e.*, that they are installing capacity that exceeds the amount designated in the PPA. SDG&E argues that overbuilding should be addressed through stronger generation caps.

Specifically, SDG&E proposes the following changes to its pro forma PPA:

- a. Section 4.2(a)(i): Impose an hourly limit of 100% of Contract Capacity to a CAISO settlement interval limit [*replacing the current limit set at 110% of Contract Capacity*];

- b. Section 4.2(a)(ii): Set the price paid for annual deliveries above 115% of the annual contract quantity at \$0/MWh (*i.e.*, set the price for actual deliveries at zero), and require Sellers to pay Buyer an amount equal to the absolute value of any negative real time Locational Marginal Price (LMP) times any excess Bundled Green Energy [*replacing the current practice of paying 75% of the contract price for annual deliveries above 115% of the contract price*]; and
- c. Section 4.2(iii): Set the price paid for deliveries above 115% of the time-of-delivery (TOD) Delivery Cap at \$0/MWh, and require Seller to pay to Buyer an amount equal to the absolute value of any negative real time LMP times any excess Bundled Green Energy [*replacing current practice of paying 75% of the contract price paid for deliveries in excess of 115% of the TOD Delivery Cap*].

IEP opposes SDG&E's proposed changes. First, as noted elsewhere, the 33% RPS is a floor on renewable procurement, not a ceiling. SDG&E's proposals discourage the production of additional renewable energy that will be needed to meet future renewable and GHG goals. Second, the Commission has recognized the potential for over-generation and has created a program in which the buyer and seller are positioned to negotiate acceptable curtailment rights to be exercised by the buyer. This policy should remain the foundation for addressing overgeneration matters, rather than authorizing SDG&E to receive the energy and associated RECs without compensation.

- 2. **Flat Time-of-Delivery Periods (pp. 28-29).** SDG&E proposes to move to flat TOD pricing. IEP's immediate observation is that flattening the TOD pricing periods risks undercutting the value that renewable projects paired with storage may bring. Moreover, flattening the TOD pricing periods seemingly will undermine the Commission's efforts to obtain renewable resources that are truly Least-Cost/Best-Fit.

The Commission should study this matter in more detail than is allowed given the schedule for approving the 2015 RPS Procurement Plans. For years the Commission (and the utilities) argued for differentiated TOD pricing in order to encourage generation to produce more energy during higher valued periods of delivery. This structure makes sense. SDG&E now argues that differentiated TOD pricing is inefficient or ineffective. This proposal warrants more study.

3. **Payments Prior to COD (p. 32).** SDG&E is concerned that a renewable facility could reach commercial operation prior to the contractual COD, but delay declaring COD until the COD date in the contract. To address this hypothetical risk, SDG&E proposes to change the price paid for energy delivered prior to COD to a fixed REC value plus CAISO revenues net of CAISO costs.

IEP opposes SDG&E's proposal. First, no evidence exists that this phenomenon is a problem. Second, this proposal risks undermining the phased development of projects, particularly large renewable projects in which blocks of capacity are developed and installed over a phased time-frame. Under these conditions, it is typical for a project to generate energy as the blocks of capacity get developed, and the contractual COD will not occur until all of the blocks are completed. Finally, even assuming that this phenomenon existed at a level to warrant the Commission's attention, the solution proposed by SDG&E is arbitrary, and presumes a framework that is not in existence for determining the

proper payment for energy “net of CAISO costs” plus and a fixed REC value. The time and resources necessary for the Commission to determine what a proper framework might be determining this net payment will far exceed the benefit to be obtained.

**III. CONCLUSION**

IEP respectfully urges the Commission to consider these comments as it deliberates on the draft 2015 RPS Procurement Plans.

Respectfully submitted this 31<sup>st</sup> day of August, 2015 at San Francisco, California.

GOODIN, MACBRIDE,  
SQUERI & DAY, LLP  
Brian T. Cragg  
505 Sansome Street, Suite 900  
San Francisco, California 94111  
Telephone: (415) 392-7900  
Facsimile: (415) 398-4321  
Email: bcragg@goodinmacbride.com

By /s/ Brian T. Cragg

Brian T. Cragg

Attorneys for the Independent Energy  
Producers Association

## VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Comments of the Independent Energy Producers Association on the 2015 Renewables Portfolio Standard Procurement Plans," dated August 31, 2015. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 31st day of August, 2015, at San Francisco, California.

/s/ Brian T. Cragg  
Brian T. Cragg