BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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JOINT REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM AND DIRECT ACCESS CUSTOMER COALITION ON THE PROPOSED DECISION OF ALJ EBKE AND THE ALTERNATE PROPOSED DECISION OF PRESIDENT PEEVEY

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February 22, 2010

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Pursuant to Rule 14.3 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the Western Power Trading Forum ("WPTF")[1] and the Direct Access Customer Coalition ("DACC")[2] submit these joint reply comments to the January 26, 2010, Proposed Decision of Administrative Law Judge ("ALJ") Maryam Ebke ("PD") and Alternate Proposed Decision of President Michael Peevey ("Alternate PD").

I. SUMMARY OF COMMENTS

WPTF and DACC briefly reply to certain comments of Pacific Gas & Electric ("PG&E") and the Coalition of California Utility Employees ("CUE"). We also endorse certain of the observations and recommendations of the Division of Ratepayer Advocates, ("DRA"), the Independent Energy Producers Association ("IEP") and The Utility Reform Network ("TURN").

[1] WPTF is a broadly based membership organization dedicated to enhancing competition in Western energy markets, reducing the cost of electricity to consumers, and maintaining high levels of electric system reliability. WPTF members include electric generators, investment banks, wholesale marketing and trading entities, scheduling coordinators, energy consultants, energy service providers, and public utilities—all of which are active participants in the restructured California electricity market. WPTF's activities and advocacy are focused on promoting the development of competitive wholesale and retail energy markets throughout the West and developing uniform operating rules to facilitate transactions among market participants.

[2] DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access for some or all of their loads.

II. REPLY TO PG&E

Both the PD and the Alternate PD appropriately reject the PG&E request for a nonbypassable charge associated with any stranded costs that might be associated with its program. PG&E deals with the issue perfunctorily, stating that the rejection of the nonbypassable charge ignores Commission precedent and that the PD fails to account for the circumstance in which PG&E buys power based on its current customer load, only to see load depart under the direct access ("DA") program or community choice aggregation ("CCA").

PG&E raises no new arguments here. Their "Commission precedent" argument simply cites the same decisions that PG&E has cited before, which WPTF and DACC have repeatedly maintained are inapplicable. As for the expressed concerns regarding load departure, it should be noted that load departure for direct access or community choice aggregation actually helps PG&E reach its RPS goal, as the renewable generation for which they have contracted would then be spread over a smaller customer base, thus increasing the utility's RPS performance. Would-be DA and CCA customers should hardly be punished for helping the utility achieve its RPS goals.

The PD and the Alternate PD should be affirmed. DA customers already pay their energy service providers ("ESP") for renewable portfolio standard compliance costs incurred by their ESP. The PD correctly notes that DA customers "would be paying double, if we were to impose a non-bypassable charge for the PV program on them."[3] PG&E's request for a nonbypassable charge should be rejected.

PG&E apparently concurs with the PD's and Alternate PD's rejection of the fixed-price PPA proposal. However, it says it must have cost of service ratemaking and cannot implement

[3] PD, at p. 53.

the Solar PV program if it is denied and the cost of its utility-owned generation ("UOG") is instead tied to the power purchase agreement ("PPA") results. WPTF and DACC support the comments of IEP that note that "the use of competitive mechanisms, such as an RFO, to set prices for a particular product is the best way to ensure that the product is properly priced in relation to its value."[4]

Furthermore, TURN has offered the following recommendations with regard to the PG&E program:

- The use of selected PPA bids to set a UOG cost cap requires greater Commission scrutiny over the solicitation process to prevent gaming by PG&E.
- PG&E should be allowed to reallocate some portion of the program MW goals to the PPA market if it appears that UOG projects will not be viable under the adopted cost cap.
- The proposed cost cap should remain in place for the first two years of the program after which time PG&E should be directed to refresh the level based on the weighted average bid price for facilities less than 20 MW in the most recent RPS solicitation.[5]

The Commission should adopt these recommendations and consider making it a requirement, as opposed to an option, for PG&E to reallocate MWs to the PPA market if any portion of the UOG projects is not viable.

Finally, DRA recommends that an Independent Evaluator be required to oversee each PPA solicitation. This recommendation should also be adopted in the Commission's final decision.

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[4] IEP Comments on the PD, at p. 5.

[5] TURN Comments on the PD, at p. 1.

III. REPLY TO CUE

CUE argues that the PPA should be modified to require that contractors working for independent power producers be required to (1) hire only electricians that are certified to perform electrical work under California Labor Code section 3099 *et seq*. and contractors and subcontractors licensed as class C-10 electrical contractors under California's Contractors' State License Board Rules and Regulations; (2) hire apprentices enrolled in state-certified apprenticeship programs that have a track record of graduating apprentices annually; and (3) use reasonable efforts to pay the prevailing wage rate to construction workers.

In support of its recommendation, CUE states that, "when the Commission approved the standard form PPA for the SCE PV program, it included a suite of terms that encourage the use of efficient labor practices."[6] It is unclear what approval CUE refers to as there is no citation and this topic is not discussed at all in D.09-06-049 that approved the SCE Solar PV Program. On February 11, 2010, SCE filed its Advice Letter 2440-E[7] that, among other things, requests approval of a similar set of labor terms. However, as the 139 page advice letter was filed only eleven days ago, the approval to which CUE refers is unclear. It would be inappropriate at this late date to insert in the Commission's decision a proposal that is not within scope, was not even contained in CUE's opening or rebuttal testimony and only surfaced for the first time in its opening brief. Furthermore, it is unclear whether the "efficient labor practices" to which CUE alludes include considerations of cost savings to utility ratepayers. WPTF and DACC recommend rejection of the CUE request. If PG&E wishes to make such a proposal in its implementing advice letter, it may elect to do so, as did SCE in its recent advice letter.

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[6] CUE Comments, at pp. 1-2.

[7] Establishment of Participation Instructions and Standard Power Purchase Agreement (PPA) for use in Request for Offers (RFO) from Independent Power Producers (IPPs) for Southern California Edison Company's (SCE) Solar Photovoltaic (PV) Program.

IV. CONCLUSION

WPTF and DACC strongly urge the Commission to retain the Proposed Decision's and the Alternate Proposed Decision's findings and conclusions that reject a fixed price PPA, that mandate a true competitive RFO for up to 50% of the Solar PV Program and that reject the PG&E request for a non-bypassable charge associated with any stranded costs. CUE's late request for special terms regarding various labor related requirements should be rejected.

Respectfully submitted,

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February 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the ***Joint Reply Comments of the Western Power Trading Forum and Direct Access Customer Coalition on the Proposed Decision of ALJ Ebke and the Alternate Proposed Decision of President Peevey*** on all parties of record in proceeding ***A.09-02-019*** by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Dated at Woodland Hills, California, this 22nd day of February, 2010.

Michelle Dangott

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