

PUBLIC VERSION

THE UTILITY REFORM NETWORK

711 Van Ness Avenue, Suite 350
San Francisco, CA 94102
Telephone: (415) 929-8876
Facsimile: (415) 929-1132
Email: freedman@turn.org

THE NATURAL RESOURCES DEFENSE COUNCIL

71 Stevenson Street, Suite 1825
San Francisco, CA 94105
Telephone: (415) 777-0220
Email: scarter@nrdc.org

December 1, 2003

TRANSMITTED VIA E-MAIL

IMC Branch Chief
Energy Division
California Public Utilities Commission
505 Van Ness Avenue – 4th floor
San Francisco, CA 94102

Re: Draft Resolution E-3814 and Wood Alternate Resolution E-3814

Dear Branch Chief:

On January 14, 2003, Southern California Edison Company (SCE) filed Advice Letter No. 1680-E seeking approval of one additional contract with a renewable energy provider pursuant to the requirements of Decision No. 02-08-071. TURN and the Natural Resources Defense Council (NRDC) submitted a joint protest on January 21, urging the Commission to reject the proposed Power Purchase Agreement (PPA). On Friday, February 6, 2003, the Energy Division circulated draft resolution E-3814 and requested comments from members of the Procurement Review Group (PRG) on the proposed denial of the power purchase agreement with TrueSolar. TURN and NRDC submitted comments in support of that draft resolution. On February 21, and then again on March 3, the Energy Division circulated two subsequent amended versions of draft resolution E-3814. TURN and NRDC both filed comments in support of those resolutions. On Wednesday, May 28, the Energy Division circulated the draft alternate resolution of Commissioner Wood. TURN provided extensive comments on June 3 in support of the draft resolution and strongly urged rejection of the Wood Alternate Resolution.

PUBLIC VERSION

On November 17, the Energy Division again circulated the draft and alternate resolutions seeking comment. Since no material changes have been made to either draft, TURN and NRDC once again urge the Commission to approve the draft resolution and reject the Wood Alternate Resolution (WAR). Given that the drafts were issued with extremely limited redactions, TURN/NRDC are providing these comments to the public service list in R.01-10-024 with only minor redactions to preserve the confidentiality of sensitive pricing information.¹

As indicated previously in filed comments, TURN/NRDC continue to be perplexed by the stalemate over this proposal. Given unanimous opposition from PRG members to this PPA, TURN/NRDC are very disappointed by the emergence of an alternate which ignores the central issues of debate and would abandon any pretense of Commission oversight.

The public controversy generated by approving the TrueSolar project would reflect poorly on the Commission's integrity and its ostensible commitment to consistent application of its own policies. The TrueSolar PPA breaks all the rules and would set a very ominous precedent for the implementation of California's Renewables Portfolio Standard (RPS). If the Commission wants to demonstrate a genuine commitment to sensible renewable energy policies, it must adopt the draft resolution and allow parties to focus on the far more important task at hand – implementing the RPS and fostering competition that will result in the selection of least-cost best-fit resources. The TrueSolar PPA, which has generated more opposition than any renewable procurement proposal since the BRPU, simply does not merit approval under the conditions proposed in SCE's Advice Letter.

I. TURN AND NRDC STRONGLY OPPOSE THE WOOD ALTERNATE RESOLUTION

As explained in painstaking detail in previous filings, TURN/NRDC urge the Commission to reject the TrueSolar PPA and therefore opposes the Wood Alternate Resolution (WAR). Along with every other PRG member active in this process, TURN/NRDC believe that the approval of this PPA is deeply objectionable given the requirement that a substantial amount of project costs be subsidized through Public Goods Charge (PGC) funds in the Emerging Renewable Resources program administered by the California Energy Commission (CEC).

¹ The Commission voted 4-0 in favor of distributing an unredacted version of both draft resolutions at its November 13 business meeting. Since the only remaining Commission-approved redactions concern pricing, TURN/NRDC have limited its redactions to pricing and PGC award amounts. All other unredacted references to SCE materials are based on the Commission decision to allow open debate on this proposal. No materials cited in these comments compromise the remaining confidentiality protections applicable to this Advice Letter.

PUBLIC VERSION

In the original protest to SCE AL 1680-E, TURN and NRDC outlined the numerous problems with the TrueSolar PPA. Since that date, the Assigned Commissioner in R.01-10-024 has issued a ruling explicitly prohibiting the reliance on Public Goods Charge (PGC) funds proposed by SCE in this PPA.² Additionally, the Commission issued two resolutions (E-3809, E-3816) in 2003 that explicitly rejected SCE's efforts to include similar public goods award contingencies and directed SCE to remove the offending provisions from its interim renewable energy contracts. The WAR would essentially ignore these rulings and resolutions and adopt the exact opposite policy by permitting SCE to link its interim renewable procurement to massive awards of PGC funds.

Rather than repeat all the arguments from previous filings, TURN/NRDC offer the Commission a run-down of the major points that require a rejection of the PPA:

- The PPA's reliance on over **[REDACTED]** million in speculative public goods awards is inappropriate, inconsistent with D.02-08-071, and violates SCE's own RFO protocols that were distributed to potential bidders. For these reasons, nearly identical PPA provisions were rejected by the Commission in Resolutions E-3809 and E-3816.³

- The PPA's reliance on PGC-funded production incentives violates the August 13, 2003 Assigned Commissioner Ruling which prohibits utilities from signing any contracts with renewable sellers that anticipate any new PGC fund encumbrances to pay "above market" costs.

- Existing state law prohibits the California Energy Commission (CEC) from issuing the public goods awards assumed in the PPA because the TrueSolar project is planned as a central station project configured solely as a merchant generator. Section 383.5(e)(2)(C) of the Public Utilities Code limits eligibility to distributed projects "intended primarily to offset part or all of the consumer's own electricity demand" and requires that "systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located." Because the TrueSolar project is configured as a merchant generator, and would neither serve onsite loads nor be located on

² Assigned Commissioner's Ruling Specifying Criteria For Interim Renewable Energy Solicitation, R.01-10-024, August 13, 2003.

³ In Resolution E-3816, the Commission approved the PPA between SCE and North American Trading and Marketing (NATM) but directed SCE to remove the PGC funding provisions and termination clauses. In justifying the removal of the PGC clause, the Commission explained that "If we grant SCE's request as proposed, we might put undue pressure on the Legislature, the Governor, and the CEC to revise statutes and regulations to comport with the proposed PGC funding and to grant such funding beyond currently authorized levels." (Final Resolution E-3816, p.17)

PUBLIC VERSION

the premises of the customer using the electricity, the project is statutorily ineligible for an award from the emerging program.⁴

- The TrueSolar project is similarly ineligible for a PGC award from the New Renewable Resources Account. Those funds are limited to procurement conducted pursuant to an RPS solicitation where the CPUC approves a market price referent and certifies that a contract was executed as the result of a “least-cost best-fit” selection process. In this case, the Commission did not establish a market price referent for interim procurement and SCE freely admits that the TrueSolar project was not even compared to bids from other renewable sellers.⁵ The TrueSolar bid, priced at approximately \$[REDACTED]/MWh (including PGC funds), is [REDACTED]. The draft resolution properly notes that “the proposed TrueSolar PPA ranked completely last when compared to all other renewable bids received by SCE.”⁶
- Projections submitted in the appendixes to SCE AL 1680-E show that the required public goods award (\$[REDACTED]/Mwh, or \$[REDACTED]/watt) represents [REDACTED]% of the total installed cost of the TrueSolar project. By contrast, CEC Emerging Account Program subsidies to residential and business customers may not exceed 50% of the capital costs of distributed photovoltaic systems installed on their premises.
- The PPA seeks to encumber [REDACTED]% of the total public goods funds that will be available for emerging renewable technologies over the next decade. Awarding an equivalent amount of PGC funds to distributed PV projects consistent with the CEC’s approved program plan would yield between 18.9 and 33.8 MW of PV capacity at the end of a decade. By comparison, the TrueSolar project promises only 5 MW.

⁴ Claiming that “the evaluation of the merits of the proposed PGC funding levels for this PPA is the CEC’s sole responsibility”, the WAR proposes to allow “the CEC to fully evaluate the proposed PPA consistent with its established guidelines and criteria.”⁴ This logic fails because of the practical and legal impossibility of the public goods award absent a statutory change to section 383.5 of the Public Utilities Code. While the Wood Alternate pretends that the CEC has discretion to issue the award, the CEC has previously explained to this Commission that “the CEC’s Emerging Account funding cannot, by statute, be used for the purposed envisioned in the contract” and that “there can be no proceeding, no CEC action, no awarding of PGC funds consistent with the proposed TrueSolar contract without changing these statutes.” (CEC protest to SCE AL 1680-E, January 21, 2003, page 1, 6)

⁵ It is important to note that SCE’s entire argument in support of TrueSolar rests on the claim that central station PV is more cost-effective than distributed PV systems. Since the new account funds are designated for allocation to projects in conjunction with RPS purchases consistent with the “least-cost/best-fit” criteria, the Commission must ensure a legitimate evaluation process prior to sending any project to the CEC to seek a subsidy payment. SCE’s selection of the TrueSolar project was fundamentally at odds with any least-cost evaluation process.

⁶ Draft Resolution E-3814, p. 11.

PUBLIC VERSION

- Although proponents argue that the construction of the facility would result in the creation of a handful of short-term union jobs, the Commission should keep in mind that the diversion of substantial PGC funds from the CEC's emerging renewables account would greatly reduce the amount of smaller solar installations throughout the state of California and harm small and mid-sized installers that rely on these funds to maintain the viability of their businesses. Many of these installers hire union labor and pay prevailing wages.

None of these arguments have been rebutted by SCE or any other party submitting comments on the three previous draft resolutions. The WAR acknowledges this fact and does not even attempt to conclude that any of the points made in the TURN/NRDC protest are invalid. After noting the legitimacy of the objections raised by TURN, NRDC, ORA and the CEC, the WAR simply dodges the core issues and proposes instead to punt the PPA to the CEC for further proceedings on the appropriateness of the public goods awards. Since the CEC cannot and will not award the required PGC funding, the approval of this PPA would only result in additional litigation at the CEC without any possibility of a different outcome. The incremental burden on PRG parties, and the CEC itself, would be unwarranted and wholly wasteful of limited staff resources. No good purpose can be served by approving the WAR.

II. BY APPROVING THE TRUESOLAR PPA, THE COMMISSION WOULD ENCOURAGE LITIGATION BY NON-SELECTED BIDDERS AND REPLICATE THE EXTENDED BATTLES THAT PLAGUED THE BRPU

Commission approval of the TrueSolar PPA would effectively invite litigation by losing bidders in SCE's 2002 RFO. This risk is created by the fact that SCE selected a project that "ranked completely last" and applied evaluation criteria that directly contradicted the official protocols distributed to bidders.⁷ As the draft resolution explains, SCE's original RFO documentation never even hinted that certain types of projects would be considered on a separate track, or that projects would be selected through anything other than a 'least-cost best-fit' process. The RFO protocols clearly stated that

In order to consider proposals on a common basis, adjustments will be made to each proposal for the purpose of scoring and ranking to account for ratepayer incurred costs attributable to the proposal...application of the evaluation criteria to a proposal will result in a single adjusted price expressed in cents/kWh, representing the anticipated cost of the proposed project to Edison's ratepayers...the lowest cost proposal based on the proposed evaluation criteria will be selected first followed by the next lowest cost proposal, until the solicitation goal of approximately 675,000 MWh of projected energy deliveries

⁷ Draft Resolution E-3814, p. 11-12.

PUBLIC VERSION

per year is achieved, or until there are no remaining proposals that satisfy the evaluation criteria.⁸

This problem is compounded by the fact that the impact of anticipated PGC funds was not assessed in a manner consistent with SCE's protocols. SCE now asks the Commission to approve the TrueSolar PPA without regard to the total cost to ratepayers (including PGC funds) despite the fact that SCE's RFO protocols made clear that expected PGC awards would be added to any bid price and used to evaluate the total project cost. The protocols explained that "SCE will also consider the amount of any PGC funds awarded to or which are being sought by a Participant, if any, on a cents/kWh basis for the purpose of rank-ordering proposals on a least-cost basis."⁹

Because SCE brazenly ignored its own protocols in evaluating bids, unsuccessful bidders offering more competitive prices than TrueSolar may be inclined to engage in litigation that could consume the interim procurement process in turmoil for an extended period. Instead of turning the interim procurement into another version of the BRPU, which involved 103 separate Commission decisions over 12 years, the Commission should reject the PPA and close the door on all outstanding issues associated with this process.¹⁰ Rather than forcing parties to fight over the merits of this proposal and SCE's interim solicitation process, parties should be encouraged to focus prospectively on RPS implementation rules and policies that will lead to the cost-effective development of renewable resources in California.

III. EVEN IF THE COMMISSION WANTS THE UTILITIES TO EXPLORE OPTIONS FOR CENTRAL STATION SOLAR GENERATION, THE SELECTION OF TRUESOLAR IS INAPPROPRIATE

SCE argues that the selection of TrueSolar is appropriate because of the economic benefits associated with this central station PV project relative to distributed rooftop systems. Unfortunately, the Commission does not have a sufficient record to reach this conclusion. If the Commission wants to explore options for large-scale photovoltaics, it should direct one or more utilities to conduct a solicitation dedicated to emerging technologies rather than approving a "one-off" deal that may, or may not, represent the current state of the market.

Based on the bidding results and other supporting data presented by SCE, the Commission has no basis to conclude that the TrueSolar project represents the best central station PV option. While TURN/NRDC continue to believe that central station PV is the wrong type of project for this particular solicitation, it would make more sense

⁸ RFO Protocols, Section V.

⁹ RFO Protocols, Section VI.

¹⁰ A history of BRPU decisions in I.89-07-004 is contained on the Commission's website. See http://www.cpuc.ca.gov/static/industry/electric/electric+markets/qf+issues/i8907004_decisions.htm

PUBLIC VERSION

to direct the utilities to conduct separate RFO processes for such systems in order to assuage any concerns that the selection of the TrueSolar project was unwarranted or politically motivated. Given the rapidly declining prices for PV panels in 2003, TURN/NRDC would expect any such solicitation to yield significantly better prices than bids received in late 2002.

IV. THE STRUCTURE OF THE PPA DEPRIVES SCE RATEPAYERS OF THE LONG-TERM BENEFITS OF THE PGC FUND AWARD

As explained the original protest submitted by TURN/NRDC, the quantity of PGC funds assumed in the PPA demands additional consideration of alternative ownership options. Given that PV systems have typical service lives of between 20 and 30 years, there is no reason for ratepayers to subsidize [REDACTED]% of the installed project costs in exchange for only 15 years of power output. If ratepayers are going to make such a generous contribution of public goods charge funds, the Commission should treat the plant as a utility asset and ensure that it provides power for its useful life.

Limiting the PPA to 15 years will deprive ratepayers of low-cost electricity from the facility [REDACTED]. The PPA should therefore either be extended or modified to provide power at [REDACTED] in years 16 - 30. Alternatively, the Commission could direct SCE to structure a PPA that transfers ownership to the utility at the end of the 15-year contract term. It would be preferable to ensure that the ratepayers financing the project should receive benefits over the life of the project.

V. THE TRUESOLAR PPA WILL RESULT IN FEWER ECONOMIC BENEFITS TO CALIFORNIA THAN THE ALTERNATIVE OF INSTALLING DISTRIBUTED PHOTOVOLTAIC SYSTEMS

There is no evidence that the approval of the TrueSolar PPA will produce net economic benefits in comparison to alternative scenarios that involve the use of equivalent subsidies to support the installation of distributed PV systems. As shown in the original protest of TURN/NRDC, allocating equivalent PGC funds to distributed solar will produce many more megawatts. It is also reasonable to conclude that distributed systems involve more labor hours per installed megawatt.

In addition, the expansion of distributed PV will provide real cost savings to the owner of any building hosting the system due to the offsetting impact on electric bills. This impact should lower costs for California businesses using PV and thereby help to preserve or expand employment at such facilities.

The Commission should therefore reject the unsupported claim that the TrueSolar project offers net economic stimulus. Since the level of PGC funding allocated to emerging technologies is essentially fixed, any funds awarded to TrueSolar will result

PUBLIC VERSION

in fewer distributed solar installations. The Commission must understand PV subsidy policy to be a zero-sum game. It would therefore be illogical to focus only on the purported benefits of a single project without modeling economic and labor impacts resulting from an alternative use of the same subsidy funds.

VI. CONCLUSION

The Commission should reject the WAR and instead approve the revised draft resolution prepared by Energy Division staff. There is no support from PRG members for this project given the PGC funding provisions and deep concern that the approval of this PPA will only embroil parties (and the CEC) in fruitless processes and embolden SCE to exert considerable political pressure to secure the required funding. There is no basis for concluding that this project compares favorably to other similar PV systems and ample evidence demonstrating the efficacy of alternative uses for an equivalent amount of PGC funds.

Yours truly,

Matt Freedman
The Utility Reform Network

Sheryl Carter
Natural Resources Defense Council

cc: Energy Division staff
SCE Procurement Review Group members
R.01-10-024 Service list (redacted version)
Commission President Michael Peevey
Commissioner Geoff Brown
Commissioner Susan Kennedy
Commissioner Loretta Lynch
Commissioner Carl Wood