

## DISSENT OF COMMISSIONER BOHN ON RESOLUTION E-4350

This resolution approves three contracts for photovoltaic projects between 9 and 20 MW in size owned by Eurus Energy America Corporation. While I have in the past voted in support of photovoltaic projects, both utility owned and independent, I have a number of significant concerns regarding the contracts presented to us here.

First, there is the price of these contracts. It is the highest price the Commission has ever approved for an RPS contract. It is more than double the Market Price Referent. The resolution mentions that these contracts were reviewed by an Independent Evaluator and by PG&E's Procurement Review Group which includes DRA. Let me quote what those parties have to say about these contracts:

PG&E's independent evaluator opined that:

*"The proposed contracts estimated value, using PG&E's Least Cost-Best Fit methodology, fall into the bottom quartile when ranked against a collection of alternative, competing sources of renewable power including remaining short-listed offers from the 2007 and 2008 competitive solicitations and a group of proposals brought by developers to PG&E for possible bilateral negotiations. In other words, all three of the Eurus Energy contracts are estimated to have lower levelized net value than about 95% of these alternative sources of eligible renewable energy. They fall into the very tail of the distribution of contract value."*

In conclusion, the independent evaluator indicated that it would find it difficult to support CPUC approval of the contracts based on their intrinsic merits and demerits.

In its protest of PG&E's advice letter DRA states that it *"is seriously concerned by the extremely high price of the PPAs relative to PG&E's other renewable alternatives and strongly opposes approval of this Advice Letter."* DRA also mentions that these *"PPAs are priced higher than many offers that were not shortlisted primarily due to their price."*

As indicated by DRA, other renewable resources are available at a lower price. The Commission has recently approved a number of other renewable energy contracts for solar, biomass and geothermal projects. The three Euro contracts in this resolution have prices significantly higher than any of those other projects.

My second concern is that these contracts are not the result of a competitive solicitation as are most RPS contracts. Quite the contrary, these contracts did not participate in PG&E's solicitation for renewables, but instead are the product of private negotiations between PG&E and the developer. Both DRA and the independent developer call into question this approach and indicate that these contracts would not have won had they chosen to participate in the competitive bidding process. DRA states, in my view correctly, that *"Commission approval of the Euros PPAs would subvert the competitive RPS solicitation process by rewarding a developer who chose not to bid into the Request for Offers with significantly higher priced contracts than would have been successful in the solicitation."*

My next concern is the relative lack of justification in the resolution for approval of these contracts. In a nutshell, the resolution indicates that regardless of price, these contracts are reasonable because the projects are viable and can be operating by next year. However, the resolution contains no analysis or quantification to support this conclusion. In fact, approving this resolution would establish a dangerous precedent that a contract at any price is reasonable so long as the project can be on-line soon.

While the resolution does not place a particular value on the benefit of the project coming on line soon, the Commission has indicated the value of having sufficient renewable energy on-line in a timely manner to meet RPS requirements. Specifically, the Commission has established a price of 5 cents/kwh as the penalty for failing to meet RPS goals, and has indicated that this price should also form a cap for payments for renewable energy credits to meet near term RPS targets. In contrast, these contracts call for

premiums much greater than 5 cents/kwh compared to other renewables, and not just for the next year or two, but for the entirety of the 20 year length of the contracts.

I do not believe the resolutions reliance on an on-line date of next year is sufficient justification for approval of these contracts, nor do I believe that such a basis is consistent with prior Commission decisions on the need for near term compliance with RPS targets. I am troubled that the Commission has chosen to ignore its adopted standards and benchmarks in approving these projects. These contracts do not compare favorably with the market price referent or with competitively bid projects and do not meet PG&E's least-cost/best-fit criteria. The premium charged for these projects is well above the value the Commission has established for meeting near term compliance with RPS goals. We are left with no standards, no cost controls, no ratepayer protections and an apparent policy of "any project at any cost".

My final concern is that these contracts appear to be inconsistent with our recent decision approving a Photovoltaic Program for PG&E. In D. 10-04-052, we approved PG&E building 250 MW of utility owned photovoltaic projects and contracting for another 250 MW from third parties. This program was explicitly authorized because small scale photovoltaic projects less than 20 MW in size were viewed as too costly to effectively participate in the RPS program. The Commission stated in finding of fact 6 that *"The PV program will not conflict with the RPS program as it focuses on a subset of projects and technologies that cannot effectively compete in the RPS program as it is currently designed and implemented."*

In establishing this separate program for contracting for photovoltaic projects under 20 MW in size, the Commission acknowledged the potential impact to ratepayers of the high cost of such projects, and imposed a number of safeguards to protect consumers from excessive costs. These included a cost cap per kwh, a limit of 250 MW of utility-owned projects and 250 MW of PPAs, and a requirement that the independent projects must go through a competitive solicitation so as to ensure that the least expensive

projects are selected. By approving this resolution, we would be enabling PG&E and Euros to skirt these requirements and ratepayer protections that the Commission has established for every other similar photovoltaic project.

For the reasons stated above, I do not support the resolution. In order to mitigate the impacts of this decision, I will prepare for the Commission's consideration a proposed decision modifying D. 10-04-052 regarding PG&E's Photovoltaic Program, to reduce the amount of additional capacity PG&E is authorized to obtain in that program. This will help address the inconsistencies between this resolution and D. 10-04-052, and help protect consumers by keeping in place our adopted limit on the amount of high priced photovoltaic projects ratepayers must pay for.

Dated August 12, 2010 in San Francisco, CA.

/s/ John A. Bohn  
Commissioner