



DRA

*Division of Ratepayer Advocates
California Public Utilities Commission*

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CPUC, Energy Division
Attention: Tariff Files, Room 4005
505 Van Ness, Avenue
San Francisco, CA 94102

Subject: **DIVISION OF RATEPAYER ADVOCATES COMMENTS ON
RESOLUTION AND DRAFT ALTERNATE RESOLUTION E-4436**

The Division of Ratepayer Advocates (DRA) supports Draft Resolution E-4436 – which rejects without prejudice Advice Letter (AL) 3759-E-A – and opposes the Draft Alternate Resolution, which approves AL 3759-E-A. The North Star Solar project is not competitively priced as compared to other offers available to Pacific Gas and Electric Company (PG&E) and thus does not merit approval. DRA also finds that the reasoning of the Alternate Draft Resolution – which approved the AL – is flawed and unfairly serves the interests of renewable developers at the expense of ratepayers' interests.

PG&E originally filed AL 3759-E on November 12, 2010 for the 60 megawatt solar photovoltaic project with a 20-year Power Purchase Agreement (PPA). The CPUC issued a Draft Resolution on June 23, 2011 that rejected the AL on the grounds that the proposed PPA was too expensive compared to similar options. The AL was subsequently held until July 27, 2011, when PG&E filed the instant amendment, AL 3759-E-A. The amendment decreases the original price of the PPA by approximately 20% per megawatt-hour and increases the output of the facility by about 14% -- from 119 GWhs annually to 136 GWh. On September 20, 2011 the CPUC issued the Draft and Alternate Resolutions E-4436 which deny and approve the project, respectively.

Oddly, both the Draft and Alternate Resolutions agree that the project is not cost competitive. The only explanation the Alternate Resolution offers for approval rather than rejection is: “the Commission finds that North Star and PG&E re-negotiated the contract price in good faith to account for the disparity in pricing with similar projects and believe that the contract price reflects North Star’s best available offer.”¹ *[emphasis in the original]*.

¹ Alternate Draft Resolution E-4436, p. 2.

The finding that re-negotiating in good faith “accounts for the disparity in pricing” is, to DRA’s knowledge, the first finding of this kind. Regardless of the good faith of the parties, ratepayers should not have to pay for contracts that are not competitively priced. The Draft Resolution rejects the AL without prejudice and if North Star Solar, LLC executes a new agreement with competitive pricing that meets the needs of PG&E’s RPS goals, it will be evaluated on its own merits

Both Resolutions find that the amended PPA was not evaluated consistently with Least-Cost Best-Fit methodology² and that North Star’s “contract price is high and net market value is low”³. PG&E’s ratepayers simply should not pay a higher price over 20 years when there is a plethora of cheaper options available (see attached Confidential Appendix) just because a developer allegedly negotiated “in good faith” with a utility.

In addition, regardless of the amount of good faith in the negotiations, the project viability of North Star does not compare favorably with other options, another fact noted in both Resolutions.⁴ So, the Alternate Draft Resolution purports to approve a project that in the Resolution itself is described as higher-priced and lower-viability than competing offers simply due to “good faith” negotiations. DRA strongly opposes this flawed reasoning and urges rejection of AL 3759-E-A.

Please contact Yuliya Shmidt at (415) 703-2719 if you have any questions about these comments.

/s/ Cynthia Walker

Cynthia Walker, Program Manager
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cc: President M. Peevey; Commissioner T. Simon; Commissioner K. Sandoval; Commissioner M. Florio; Commissioner M. Ferron; J. Simon; P. Douglas; Director of the Energy Division J. Fitch; General Counsel F. Lindh; Chief Administrative Law Judge K. Clopton; Honesto Gatchalian, Maria Salinas, Jason Simon, Service List R.11-05-005

² Finding 3 in Alternate Draft Resolution E-4436 and Finding 1 in Draft Resolution E-4436.

³ Finding 5 in Alternate Draft Resolution E-4436 and Finding 3 in Draft Resolution E-4436.

⁴ Finding 9 in Alternate Draft Resolution E-4436 and Finding 7 in Draft Resolution E-4436.