BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	))))	Rulemaking 11-05-005 (Filed May 5, 2011)

RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO MOTION OF THE CLEAN COALITION FOR IMMEDIATE AMENDMENTS OF AB 1969 CREST POWER PURCHASE AGREEMENT

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Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Southern California Edison Company ("SCE") provides this response to the Motion of the Clean Coalition For Immediate Amendments of AB 1969 CREST Power Purchase Agreement ("Motion").

I.

INTRODUCTION

To read the Motion, one would think that the state's Renewables Portfolio Standard ("RPS") goals, the health of the California economy, and the ability of generators to claim Federal Cash Grants all hinge on whether the Commission grants the Motion. To the contrary, SCE's renewables procurement is consistently robust, generators can meet the requirements on the Section 1603 cash grant program without a power purchase agreement ("PPA"), and there is no evidence that granting the changes requested by Clean Coalition will have any bearing on the California economy. By its motion, Clean Coalition is seeks to lock in an above-market price for projects, rather than wait for the Commission to complete its program, contract, and pricing reforms for Assembly Bill ("AB") 1969-eligible projects in the Senate Bill ("SB") 32/SB 2 1X proceeding.

Clean Coalition's Motion asks the ALJs to order SCE to revise its filed form CREST PPA that was approved via Resolution by the full Commission through a Tier 1 advice letter. Clean Coalition specifically asks the ALJs to rule on the Motion before interested parties could respond, and also asks that SCE not be allowed to include any other substantive changes to the PPA. In requesting this relief, Clean Coalition essentially asks the ALJs to circumvent stakeholder efforts in a pending rulemaking and violate General Order 96-B in the process. This requested relief is procedurally inappropriate, unnecessary, and substantively defective, and should be denied accordingly.

II.

RESPONSE

A. Clean Coalition's Motion Is Procedurally Inappropriate.

Clean Coalition asks the ALJ to order SCE to change contract terms in its CREST PPA via a Tier 1 advice letter on or before September 1, 2011. Such action would violate the Commission's Rules of Practice and Procedure and General Order 96-B. The CREST PPA is a filed form agreement pursuant to SCE's CREST tariff that was adopted by the *full Commission* via Resolution.[1] It is thus inappropriate for Clean Coalition to seek to modify that PPA through a motion. A Petition for Modification is the appropriate vehicle to make changes to an issued decision, including a Resolution.[2] If Clean Coalition seeks changes to Resolution E-4137, it must file a Petition for Modification of the Resolution in accordance with General Rule 7.8 of General Order 96-B.

As part of any such Petition, Clean Coalition must support its factual allegations with specific citations to the record in the proceeding or to matters that may be officially noticed.[3] Allegations of changed facts must be supported by an appropriate declaration or affidavit.[4] Clean

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1 The Commission approved SCE's AB 1969 program in Resolution E-4137 on February 14, 2008.
2 *See* Commission Rule of Practice and Procedure 16.4; General Order 96-B, General Rule 7.8.
3 *See* Commission Rule of Practice and Procedure 16.4(b)
4 *Id.*

Coalition must also explain why a petition could not have been presented within one year of Resolution E-4137. Clean Coalition's motion fails to meet these legal standards by failing to support any of its factual allegations with a declaration or affidavit, and failing to explain why it could not have proposed its requested changes back in 2008. The Motion fails on all of these grounds, and should be dismissed on that basis alone.

Clean Coalition's request to order SCE to revise the CREST PPA through a Tier 1 advice letter is also inappropriate. Industry disposition of an advice letter is limited to situations in which disposition of the advice letter is considered a "ministerial act" where the Energy Division "need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statutes or Commission orders."[5] In particular, a Tier 1 advice letter is only appropriate "where the wording of the change follows directly from the statute or Commission order" and the contract "conforms to a Commission order authorizing the Contract, and that requests no deviation from the authorizing order."[6] Here, the Commission has already approved SCE's CREST PPA via Resolution, and thus the changes requested would be contrary to Commission order, not consistent with it. As such, Energy Division disposition through a Tier 1 advice letter would violate General Order 96-B.

B. Granting Clean Coalition's Motion Would Only Serve To Short Circuit The Stakeholder Process In This Proceeding.

Clean Coalition complains that SCE suspended the process it began to reform its CREST PPA "despite the sustained efforts of many parties and the expressed good will and intent of SCE and the CPUC."[7] SCE discontinued its CREST Reform process because the Commission took active steps to begin implementation of SB 32/SB 2 1X. On June 27, 2011, ALJ DeAngelis issued a ruling seeking comments on implementation of SB 32 and SB 2 1X (the "Ruling"). It became apparent at the July 11, 2011 Prehearing Conference on the Ruling that ALJ DeAngelis also

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5 *See* General Order 96-B, General Rule 7.6.1.
6 *See* General Order 96-B, Industry Rule 5.1 (Matters Appropriate to Tier 1).
7 Motion at 4.

expected the investor-owned utilities ("IOUs") to file draft tariffs and contracts to implement SB 32/SB 2 1X, and the IOUs were ultimately given until August 5, 2011 to complete this task. The Ruling stated the ALJ's desire to move forward expeditiously with implementation of Public Utilities Code section 399.20, and to supply the Commission with a Proposed Decision before the close of 2011.[8]

SB 32 and SB 2 1X amended and replaced AB 1969. It is thus SCE's position that the new Section 399.20 program will replace the CREST program, and once the Section 399.20 program is adopted, the CREST program will be closed to new customers. SCE discontinued its CREST reform process because the proposed revisions to the CREST PPA that were discussed in the CREST reform process are now being addressed in the SB 32/SB2 1X forum. It makes little sense to continue reforming the CREST program and agreement, when they will be replaced by the SB 32/SB2 1X program and agreement shortly. If SCE had continued down the CREST reform path and filed a Tier 3 advice letter to revise the CREST agreement,[9] the Commission could not likely have addressed those changes any faster than it was already addressing the changes required by SB 32 and SB 2 1X, *i.e.*, before the close of 2011. In any event, in light of the fact that the SB 32/SB 2 1X program would be completed at the same time and replace the CREST program, there is no need to continue revising the CREST PPA. Rather, if the goal is to achieve a revised program for small renewable generators by the end of 2011, the focus should be on the efforts to implement Section 399.20.

At all times, SCE has endeavored to ensure a fair stakeholder process. It did so during its CREST reform efforts by soliciting the input of stakeholders, and it is doing so now by submitting its SB 32/SB 2 1X contract and pricing proposals for Commission and stakeholder review. Clean Coalition's Motion, on the other hand, seeks to eliminate any stakeholder input on the changes it is

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[8] Ruling at 1, 2 ("Today's ruling sets forth an initial proposal for implementing these amendments with the intention of moving forward expeditiously on this matter. Other issues identified in R.11-05-005 will proceed on a separate track. . . . . The goal is to present the Commission with a proposed decision on this matter toward the end of 2011.")

[9] As discussed above, a Tier 3 advice letter would have been required to amend the CREST PPA, because the CREST tariff and filed form PPA were adopted by the full Commission via Resolution.

requesting. Clean Coalition specifically asked the ALJ to rule on its motion before interested parties could comment, and to order SCE to refrain from filing any substantive contract changes other than those requested by Clean Coalition.[10] The CPUC should not tolerate such lopsided outcomes or encourage motions as a vehicle for requesting modifications to approved PPAs. This tactic, if it were deemed appropriate, would invite every counterparty with a complaint about a contract provision to file a motion to resolve its particular issue(s). Rather, the Commission should require parties to employ the open and transparent stakeholder processes available to them.

There is such a process taking place at this time which includes the opportunity for Clean Coalition to have its concerns addressed. Moreover, this process is intended to be expeditious and result in a decision by the close of 2011. This stakeholder process will also allow other necessary program and pricing modifications *required by statute* to be addressed. Such interdependent issues should not be resolved in isolation, and all interested parties should be provided the opportunity to comment and participate in the implementation of the Commission's program.

C. Clean Coalition's Proposed Changes Are Unnecessary.

Clean Coalition claims that its proposed changes to the CREST PPA are needed immediately, because developers must have an acceptable PPA to receive federal cash grants for their projects. Clean Coalition claims, without any evidentiary support, that developers cannot obtain financing in the absence of Clean Coalition's proposed PPA changes.

This is not accurate. Obtaining a CREST PPA – or any PPA – is not a prerequisite to obtaining a federal cash grant pursuant to Section 1603. There is simply no requirement under Section 1603 that a project have a PPA. As Clean Coalition acknowledges, "cash grant eligibility may be preserved by completing work of a significant nature on the project or investing 5% of each project's tax basis in equipment destined for that project by the end of 2011."[11] A PPA is not required for any developer to commence construction or make the capital investment necessary to

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[10] Motion at 6.
[11] Motion at 3.

meet these safe harbor provisions and be eligible for the cash grant program.[12] Rather than being necessary to obtain federal cash grants, SCE is concerned that Clean Coalition's proposed changes are intended to lock in an above-market price for generators that would otherwise be unable to sign a PPA at this time, rather than transition these projects to the new pricing methodology that the Commission will develop in its implementation of SB 32/SB 2 1X. Such an outcome would only increase costs for SCE's customers.

D. Clean Coalition's Proposed Changes Are Substantively Flawed.

In addition to the procedural and policy reasons why the Commission should reject the Motion, the changes proposed by Clean Coalition should be rejected because they are substantively flawed. For example, Clean Coalition asks the Commission to extend the date by which a project can begin operations *indefinitely* to "accommodate any delays by SCE beyond industry standards or as the result of Force Majeure."[13] There is no definition of "industry standards" and there is no limit on the extension provided. The provision is vague and ambiguous, and will likely lead to litigation. It also has the potential to fill the cap for the Section 399.20 program – indefinitely –with non-viable projects. Clean Coalition's request that developers be allowed to sign "any interconnection agreement" is likewise vague and ambiguous; it is unclear what interconnection agreement Clean Coalition has in mind or what process the developer would follow. In short, there are good reasons why changes to a program PPA should be addressed in a collaborative process – not via a motion. The collaborative process helps to ensure that the provisions included in the contracts are clear and well-developed, and address the "lessons learned" in previous contracts and Commission programs. The Commission should reject Clean Coalition's Motion, and refer the issues raised concerning contract provisions to the SB 32/SB 2 1X implementation forum.

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[12] Indeed, Clean Coalition states that developers have been working steadily on project development, including investing money to support the development of CREST projects. *Id.*

[13] *See* Motion, Attachment A.

III.

CONCLUSION

For the foregoing reasons, SCE respectfully requests that the Motion be denied.

Respectfully submitted,

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By: Amber Dean Wyatt

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August 30, 2011

VERIFICATION

I am a manager in the Renewable and Alternative Power Department of Southern California Edison Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

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

Executed this **30th day of August, 2011**, at Rosemead, California.

/s/ Laura Genao
By: Laura Genao

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