

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

CLEAN COALITION COMMENTS ON THIRD REVISED POWER PURCHASE  
AGREEMENT

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- dealing with such lengthy contracts – particularly when we consider the numerous other extremely burdensome requirements the utilities and the Commission are attempting to impose on developers in what should be a streamlined process for smaller RPS-eligible projects
- “Contract bloat” is an issue in itself, though we fully recognize that clarifying issues that were not previously clarified can have merit, even when such clarifications add length. The problem is that there is no justification for a 4-5 fold increase in length in this particular PPA.
  - We urge the IOUs and the Commission to keep in mind that the new SB 32 program is not only for projects of 3 MW; rather, it is for projects up to 3 MW so may well include projects significantly smaller than 3 MW, particularly if positive changes are made to the program details in the future that allow smaller projects to be economically viable as SB 32 projects. As such, we urge the IOUs and the Commission to keep this program as streamlined and accessible as possible, to ensure the widest possible participation.
  - We have recommended numerous changes and simplifications to the PPA, but we also strongly recommend that a separate and further simplified PPA be developed for projects less than one MW, as is already the case for PG&E’s solar PV program
    - However, an alternative to having a separate PPA for projects less than one MW is to be explicit about which provisions of the proposed PPA apply to projects less than one MW and which don’t. We have indicated where we believe projects less than one MW should be exempt from proposed requirements
  - The proposed PPA represents, in sum, a consistent subordination of the rights of Seller to the rights of Buyer. Numerous obligations are imposed on Seller that aren’t symmetrically imposed on Buyer. In order to have a fair and effective PPA, we recommend the changes described herein and in the redlined PPA.
    - In general, these types of contracts should be symmetrical in terms of rights and obligations on the parties – except where the nature of the

transaction requires asymmetry. We have indicated where we believe the rights and obligations should be more balanced.

- In general, the PPA attempts to impose a massive ongoing paperwork and reporting burden on these small projects. This needs to be corrected and we have recommended many ways to do so. We shouldn't allow the paperwork burden to drown these small projects in what should be a streamlined program.
- Projects that are equal to or less than the minimum coincident load of the substation at issue should be “deemed eligible for Resource Adequacy” and thus eligible for the higher TOD values.
  - The Commission has authority to determine Resource Adequacy requirements. If projects are equal to or less than the minimum coincident load on the substation at issue then they should be considered deliverable because the power produced will stay behind the substation. As such, these projects should be eligible for Resource Adequacy and the higher TOD values.
- The Telemetry Cost Cap should apply to facilities one MW and above only, and telemetry costs for facilities less than one MW should be paid by the utility seeking to require telemetry
  - The burden on developers of requiring telemetry on any facility under one MW is not justified by the benefits of telemetry
- Forecasting should be managed entirely by each IOU because this is far more efficient and effective than having each Seller do it, and complying with different requirements for each IOU. Requiring Seller to pay a reasonable fee for forecasting services by the IOU is acceptable, but the actual work should be handled by each IOU and/or its consultants.
  - Alternatively , we recommend that each Seller is provided a choice, to either pay the required fee or provide its own forecasting. This would promote market competition and keep costs low.
- The SB 32 program is the first wholesale IOU program, at what may be a meaningful scale (depending on how many MW are consumed in the existing AB 1969 program for each IOU), for projects at 3 MW or less. As such, this program

should motivate the IOUs to change their business practices (as we discuss herein), where appropriate, in order to streamline procedures for smaller renewable energy projects. The Governor’s 12,000 MW DG goal should be sufficient incentive for this change in mindset.

- Last, every burden the IOUs seek to impose on Sellers through this contract must be balanced against the risk alleged by the IOUs. In many cases, we argue that the risk does not justify the burden. If the IOUs feel differently, we urge the Commission to require the IOUs to produce empirical data supporting the alleged risk in each issue area. In short: the burden of proof is on the IOUs to justify each new provision in this contract and the Commission should not provide *carte blanche* to the IOUs to impose a massive number of new contractual requirements on Sellers under what should be a streamlined program.

### *Specific issues*

#### *Delays and extensions*

Section 2.8.2: This section should be revised to allow a “day for day” extension of time when the utility misses interconnection process deadlines. There should be no limit on this extension because such extensions are entirely out of the control of Seller. Moreover, the decision that approves the PPA should also modify D.12-05-035 to remove the current 24+6 month deadline and replace it with the formulation just stated.

Section 2.8.4: The same revision should occur.

Section 2.8.2.4 As with Section 2.8.2, the PPA decision should not only modify the proposed PPA but also D.12-05-035, to allow for day for day extensions when the utility misses interconnection deadlines, under the same rationale just stated for section 2.8.2.

Section 2.8.4: Strike since there is no “no later than” COD under our suggested changes.

Section 2.9.1: Add “rebuttable presumption” clause as in our redlined PPA

### *Contract quantity*

Section 3.2: This provision should be stricken as unnecessary and over-reaching. Alternatively, this section should apply only to projects one MW and above. If the IOUs object to these changes, the Commission should be require that they show data supporting the alleged risk requiring this level of detail regarding expected production (which is tied punitively to the “Guaranteed Energy Production” provision in section 12).

### *Delivery term*

Section 3.5: We recommend that the PPA include a 25-year term option, as is the case for RPS contracts. While SB 32 only requires contracts be offered up to 20 years, nothing in the law prevents the Commission from adding a 25-year contract term, which may often be desirable for both Sellers and ratepayers, as well as Buyers, due to the benefits of locking in a PPA for an additional 5-year revenue stream and production of renewable power.

Section 3.5.4: Strike since no Collateral Requirement should apply after COD.

### *Billing*

Section 3.7.4: delete language requiring Seller to invoice Buyer each month. This is way too burdensome and Buyer should simply issue payment automatically each month based on the meter reading. Alternatively, this provision should apply only to facilities larger than one MW.

### *WREGIS*

Section 4.3: WREGIS obligations should be harmonized between utilities and we recommend that PG&E and SDG&E follow SCE’s lead in handling this matter for all SB 32 PPAS. We understand that this is not currently PG&E’s practice, but we again urge all

IOUs to modify their business practices in line with new policy directions such as the Governor's goal of 12,000 MW of DG. It is far more efficient for each IOU to handle this kind of task than to have each Seller do it. Ditto with section 4.3.9.

#### *Resource Adequacy*

Section 4.4.3 is overly broad and should be stricken in its entirety.

#### *Compliance Expenditure Cap*

Section 4.6: Compliance Expenditure Cap should be re-defined, as we suggest in our redline (emulating SEIA's earlier comments). Moreover, the cap should be limited to \$5,000 annually, rather than \$25,000, keeping in mind the need to limit fees for SB 32 projects in order to ensure access to the program for smaller projects as well as projects up to 3 MW in size.

#### *EIRP*

Section 4.7: Should only apply to facilities over one MW.

#### *Covenants*

Section 5.1.6: moved up from Seller warranties section so that it applies to both Buyer and Seller.

Section 5.3.2: Added a clarifier that this applies only to hydro projects.

Section 5.3.8: moved up to general representations and warranties section so that it applies to Buyer and Seller.

Sections 5.3.12 and 5.3.13 are over-reaching and don't belong in the PPA because they concern interconnection issues. Alternatively, if the IOUs feel that they should be in this PPA, these provisions should be justified further with empirical data.

### *Curtailment*

Section 6.8.4: Strike the last sentence as redundant.

### *Reporting*

Section 6.12.1 should require a report once every three months rather than one report per month. We shouldn't allow the paperwork burden to drown these small projects.

Section 6.12.4: should require Commission approval instead of simply Buyer "sole discretion."

Section 6.14 is over-reaching and should be stricken. As long as Seller is meeting obligations, Buyer should have no say in modifications to the facility. Alternatively, the language should be modified such that the IOU only has a consent right for changes that are material to the contract.

### *Insurance*

Sections 10.1.2, .3 and .4, requiring insurance coverage beyond general liability, should be stricken as inappropriate for SB 32 projects. The point of SB 32 is to create an expedited and streamlined program for small renewable generators and requiring insurance beyond commercial general liability insurance is not streamlined. Section 10.2.6 should be modified accordingly.

### *Guaranteed Energy Production*





### *Right of first refusal*

Section 14.8: This section should be stricken as asymmetrical and unfair, or the IOUs should be required to produce additional empirical data to justify this restriction.

### *Transmission cost termination right*

Section 14.9: The final decision increased the transmission cost termination amount to \$300k, which is still problematic for reasons we have raised in our Application for Rehearing. We recommend striking this section in its entirety. The decision approving the PPA should also modify D.12-05-035 such that the “strategically located” requirement is met if the project output is equal to or less than the minimum coincident load on the substation at issue. If such modification was made, the need for a transmission cost termination right is removed. Utility interconnection studies can be inaccurate by an order of magnitude, so it makes little sense to establish a fixed monetary limit like the \$300k figure.

### *Forecasting*

Section 15.2: all forecasting should be Buyer’s responsibility because of the dramatic increase in efficiency if Buyer handles all forecasting for its project portfolio rather than each Seller attempting to do so individually.. We’ve also redlined Appendix D – Forecasting Requirements.

### *Release of information*

Section 16.2: strike as ridiculous, over-reaching and perhaps illegal.

### *Assignment*

Section 17.1 should be modified to allow assignment but require that Seller notify Buyer of such. There is no good rationale for requiring Buyer consent for assignment, which would constitute another hurdle to an efficient and free-flowing market for renewable energy.

### *Dispute resolution*

Section 19.1 should be modified to eliminate “sole” reliance on the section 19 dispute resolution procedure and allow other means for dispute resolution if required, including court remedies.

### *Telemetry*

Appendix F (PG&E and SCE): A limitation on ongoing costs in addition to installation costs should be added. The proposed \$20K limit only applies to installation costs. Seller should not be required to pay monthly costs (e.g. for a T1 line) over \$100/month.

### *Definitions*

“Site Host Load”: removed reference to PUC section 218(b) because it is not clear what this reference achieves.

### *Appendix D*

We have made a number of changes in line with our recommended changes to forecasting requirements.

Respectfully submitted,

TAM HUNT

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to read 'TH' followed by a long horizontal stroke.

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Dated: August 15, 2012

VERIFICATION

I am an attorney for the Clean Coalition 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 15<sup>th</sup> day of August, 2012, at Santa Barbara, California.

Tam Hunt

A handwritten signature in black ink, appearing to read 'TH', with a long horizontal flourish extending to the right.

Clean Coalition