

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the matter of the Order Instituting  
Rulemaking To Continue Implementation  
and Administration of California  
Renewables Portfolio Standard Program.

Rulemaking 11-05-005  
(Filed May 5, 2011)

**COMMENTS OF THE CITY OF SAN DIEGO  
ON THE PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE REGINA DEANGELIS AND THE  
ALTERNATE PROPOSED DECISION OF COMMISSIONER MARK FERRON**

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**I. Introduction**

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure and the e-mailed instructions from Administrative Law Judge (ALJ) Regina DeAngelis on March 20, 2013 and April 3, 2013, the City of San Diego (City) submits these comments on the Proposed Decision (PD) of ALJ DeAngelis and the Alternate Proposed Decision (APD) of Commissioner Mark Ferron.

The City provides many services to its citizens and neighboring agencies. This includes the City's Public Utilities Department which provides water and wastewater utility services. In addition, the wastewater services offered by the City of San Diego include service to many other cities in the San Diego region; the City's wastewater operation is metropolitan. In providing water and wastewater services the City must

necessarily adjust to demands, and these demands come in many forms. The electrical loads entailed in providing these services can be affected by many factors. Population changes, actions of other agencies participating in the metropolitan wastewater system, and even the weather can significantly alter the City's electrical load. To help serve these electrical loads the City develops and operates on-site biogas and hydroelectric generating facilities and currently sells excess energy from these facilities to San Diego Gas & Electric.

The City appreciates the PD's and APD's efforts to revise the Feed-in Tariff (FiT) programs to include a new streamlined standard contract that incorporates the FiT program requirements adopted in Decision (D.) 12-05-035 (as modified by D.13-01-041). A key component of D.12-05-035 is the confirmation that the FiT programs are intended to include generators that offer excess sales, stating that "PG&E, SCE, and SDG&E are required to offer generators two options: either full sales or excess sales."<sup>1</sup> Unfortunately, while the standard contract approved by the PD and APD purports to provide these two options, it fails to include any substantive differentiation between full sales and excess sales, effectively eliminating the excess sales option as a practical alternative. Since the standard contract fails to provide a viable contract option for excess sales it violates the direction of D. 12-05-035 that utilities offer an effective form of contract for excess sales. Approving the contract without further modification to provide a distinct and viable excess sales option would result in legal error.

In these comments, the City requests certain modifications to the standard contract to ensure that the excess sales option is viable and that generators that offer excess sales are not discriminated against by the PD and APD. Specifically, the City

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<sup>1</sup> D.12-05-035 at p. 86 and Ordering Paragraph 12 at p. 123.

recommends that Section 3.2 of the standard contract regarding Contract Quantity be stricken as requested in comments by the Clean Coalition,<sup>2</sup> at least for those sellers that select the excess sales option. The City also recommends that the Guaranteed Energy Production requirements be revised to distinguish between sellers selecting the full buy/sell option and the excess sales option.

## **II. The Commission Should Provide a Viable Excess Sales Option by Eliminating the Contract Quantity Requirement for Excess Sales, or Alternatively, Allowing Contract Quantity to be Updated Each Year to Reflect Changes in Site Host Load**

The standard contract, as contemplated by this PD, does not provide a viable excess sales option to generators, as required by D.12-05-035. The requirement for sellers to state Contract Quantity for each year of the contract term, while permitting a one-time change based on an adjustment to Contract Capacity, provides the buyer with the ability to plan its purchases of RPS-eligible energy and is a reasonable requirement for sellers able to commit to a full buy/sell agreement. However, for on-site generators serving site host loads and offering excess energy to the buyer, it is unreasonable to expect the seller to forecast and commit to annual contract deliveries for the term of the contract at the risk of significant economic harm. Site host loads can be uncertain and are generally beyond the control of the generator.

Among the attributes of a well-structured contract is that risks be allocated to the party best suited to manage that risk. In this case, the uncertainty and variability associated

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<sup>2</sup> Clean Coalition August 15, 2012 comments at p. 6.

with retail loads is something that the utilities deal with every day in the course of their ordinary business. The seller, on the other hand, has no way to mitigate the risk of changes in site host load once it has entered into a binding contract with the buyer. The Contract Quantity and Guaranteed Energy Production provisions of the standard contract therefore represent an unreasonable financial risk to sellers of excess energy and will discourage their participation in the FiT program. As a result, the City recommends that Section 3.2 of the standard contract be stricken with respect to excess sales.

3.2 Contract Quantity. The “Contract Quantity” during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule,” set forth below, which amount is net of Station Use, and, for excess sale arrangements, Site Host Load. Sellers selecting the full buy/sell option shall have the option to update the Delivery Term Contract Quantity Schedule one (1) time to the extent such a change is necessary based upon any adjustment to the Contract Capacity based on the Demonstrated Contract Capacity and the definition of “Contract Capacity,” within ten (10) Business Days of Buyer’s Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable, which adjusted amounts shall thereafter be the applicable “Contract Quantity.” Section 3.2 shall not apply to sellers selecting the excess sales option.

Alternatively, if the Commission decides to impose the Contract Quantity provision on excess sales, sellers of excess energy should be permitted to frequently revise the forecast of Contract Quantity. If the seller can demonstrate that the Contract Quantity should be adjusted as a result of any actual or anticipated change to the site host load, the seller should be permitted to adjust the Contract Quantity. Although such a change in site host load could occur at any time and is outside the control of the seller, the City acknowledges the interest of the IOUs in being able to forecast its purchases of RPS-eligible energy. If the Commission is unwilling to exclude sellers of excess energy from the requirement to forecast net deliveries, then the Commission should balance the needs

of the IOUs and sellers and allow such adjustments to contract quantity once during each contract year.<sup>3</sup> The City therefore recommends that Section 3.2 of the standard contract be modified as follows:

3.2 Contract Quantity. The “Contract Quantity” during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule,” set forth below, which amount is net of Station Use, and, for excess sale arrangements, Site Host Load. Sellers selecting the full buy/sell option shall have the option to update the Delivery Term Contract Quantity Schedule one (1) time to the extent such a change is necessary based upon any adjustment to the Contract Capacity based on the Demonstrated Contract Capacity and the definition of “Contract Capacity,” within ten (10) Business Days of Buyer’s Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable, which adjusted amounts shall thereafter be the applicable “Contract Quantity.” Sellers selecting the excess sales option shall have the option to update the Delivery Term Contract Quantity Schedule one (1) time each year to the extent such a change is necessary based upon any adjustment to the Site Host Load within ten (10) Business Days of Seller’s Notice of such adjustment to the Site Host Load, which adjusted amounts shall thereafter be the applicable “Contract Quantity.”

### **III. The Commission Should Revise the Guaranteed Energy Production Requirements to Distinguish Between Full Buy/Sell and Excess Energy Sellers**

If the Commission is not inclined to grant the relief requested in Section II above, and the Section 3.2 Contract Quantity requirement is enforced on excess energy sellers, then the definition of Guaranteed Energy Production needs to be revised to avoid discriminating against sellers offering excess sales. As discussed above, on-site generators offering excess sales have limited control over the site host loads that are netted from generation for delivery to the buyer. As a result, excess sales are subject to greater variability outside the control of the seller than are deliveries from a full buy/sell generator. By defining Guaranteed Energy Production as the product of (x) and (y), where (x) is a percentage

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<sup>3</sup> Consistent with the Placer County August 15, 2012 comments at p. 4.

that varies depending on whether the seller is wind As-Available, all other As-Available, Baseload or hydroelectric, and (y) is the Contract Quantity, the standard contract ignores the variability in site host load that directly affects the ability of sellers offering excess sales to reliably deliver Guaranteed Energy Production and places potentially insurmountable barriers in front of sellers of excess generation. To partially mitigate this, the City recommends that Section 12.1.2 of the PD and APD be revised as follows:

12.1.2 [one hundred seventy percent (170%)] [*for all other As-Available and for all Excess Sales*]

#### **IV. Conclusion**

The City appreciates the PD's and APD's efforts to implement D.12-05-035 and approve a streamlined standard contract for the new FiT program that includes an excess sales option. Unfortunately, all of the implications of making the FiT tariff and standard contract available to sellers offering excess sales have not been addressed in the standard contract. As a result, if the standard contract is approved without the modifications recommended by the City, there will not be a viable option for excess sales from on-site generators to participate in the FiT program. In order to optimize deliverability to load centers as required by Section 300.20(b)(3) of the Public Utility Code, it is essential that on-site generators be included in the FiT program. To avoid discriminating against sellers offering excess sales and comply with D.12-05-035, the contract provisions concerning Contract Quantity and Guaranteed Energy Production need to be modified as recommended above. These recommended changes acknowledge the limited ability of on-site generators to forecast and guarantee future energy deliveries given the variability and uncertainty of site host loads. Without these changes, on-site generators will not be

encouraged to participate fully in the FiT program due to the unreasonable financial risks of the standard contract. As a result, the full benefits of local renewable generation will not realized as intended by the legislature.

Dated: April 8, 2013

Respectfully submitted,

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By: \_\_\_\_\_/s/\_\_\_\_\_

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