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 MOTION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) FOR CLARIFICATION REGARDING EXISTING ASSEMBLY BILL 1969 FEED-IN-TARIFF PROGRAM

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April 24, 2013

CLEAN COALITION COMMENTS ON MOTION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) FOR CLARIFICATION REGARDING EXISTING ASSEMBLY BILL 1969 FEED-IN-TARIFF PROGRAM

The Clean Coalition respectfully submits these comments on PG&E's motion for clarification, submitted April 5, 2013. These comments are filed late with permission granted by ALJ DeAngelis via email on April 22, 2013.

The Clean Coalition is a California-based nonprofit organization whose mission is to accelerate the transition to local energy systems through innovative policies and programs that deliver cost-effective renewable energy, strengthen local economies, foster environmental sustainability, and enhance energy security. To achieve this mission, the Clean Coalition promotes proven best practices, including the vigorous expansion of Wholesale Distributed Generation (WDG) connected to the distribution grid and serving local load. The Clean Coalition drives policy innovation to remove major barriers to the procurement, interconnection, and financing of WDG projects and supports complementary Intelligent Grid (IG) market solutions such as demand response, energy storage, forecasting, and communications. The Clean Coalition is active in numerous proceedings before the California Public Utilities Commission and other state and federal agencies throughout the United States in addition to work in the design and implementation of WDG and IG programs for local utilities and governments.

I. Comments

a. The Commission should reject PG&E's request to maintain a distinction between types of developers

PG&E (Motion for Clarification, p. 1) "seeks to clarify that entities that are not

public water or public wastewater agencies are ineligible to participate in the tariff and standard contract available to public water and wastewater agencies." PG&E states further (p. 6):

> In D.07-07-027, the Commission ordered the creation of two separate and distinct programs: one program applicable to public water and wastewater agencies; and other program applicable to customers that are not public water and wastewater agencies. PG&E has consistently enforced its AB 1969 FIT programs to offer separate and distinct service under the two programs, limiting participation in E-PWF Program to only those entities that are public water or wastewater agencies. Other entities that are not public water and wastewater agencies are required to participate in PG&E's E-SRG Program.

The Clean Coalition opposes PG&E's motion in this regard, disagrees with PG&E's legal reasoning, and urges the Commission to require PG&E to eliminate any distinction between types of developers with respect to its AB 1969 program, as it has already done with respect to SB 32.

SB 380 eliminated the distinction between types of developers (water/wastewater treatment entities vs. all others)[1] and it appears that the Commission should have previously required the utilities to remove this distinction for both AB 1969 and SB 32. The Commission has previously done so with respect to the SB 32 feed-in tariff, in D.12-05-035, but not for the AB 1969 feed-in tariff. The AB 1969 program is still active until the Commission approves the final SB 32 program tariff and PPAs.[2] The Commission's limited focus on the SB 32 program seems to have been contrary to SB 380's requirements, which

[1] SB 380 states in relevant part (P.U. Code section 399.29(e)), eliminating the only water/wastewater agencies: "Each electrical corporation shall only be required or contracts under this section until that electrical corporation meets its prop 500 megawatts based on the ratio of its total peak demand of al electrical corporations." Accordingly, the programmatic distinction and caps imposed 027, which are reflected in PG&E's AB 1969 tariff, are not relevant and

[2] D.12-05-035 provides (pp. 74): "Now is the appropriate time to consolidate these distinct] tariff schedules. SB 380 amended § 399.20(b) by removing the generation facilities be owned and operated by a public water or wastewater

modified Public Utilities Code section 399.20. This section codified the AB 1969 feed-in tariff program, at the time that SB 380 was passed into law, and the same section was later modified by SB 32. SB 380 was passed into law before SB 32 became law, so it appears to have been legal error for the Commission to have removed the distinction between types of developers for SB 32 programs but not also for the AB 1969 programs. The Commission should now take the opportunity to require the utilities to remove this distinction for AB 1969 programs, as we have also urged in our recent protest to SCE's Advice Letter 2870-E.

b. The Commission should reject most of PG&E's other recommendations

PG&E writes (p. 2):

> If the Commission directs PG&E to offer its PPA applicable to public water and wastewater agencies to other business entities, PG&E requests that the Commission: (1) clarify the minimum criteria that such business entities must establish and maintain to receive service under the public water and wastewater tariff and PPA; (2) clarify the process to be used to modify the PPA needed [to] enforce such eligibility criteria; and (3) grant PG&E the authority to execute appropriately modified PPAs with applicants that meet such eligibility criteria and that request to execute a PPA prior to the effective date of the successor Re-MAT Program.

PG&E adds (p. 3): "Since 2007, the Legislature adopted several amendments to Public Utilities Code §399.20. These amendments cover a broad range of issues, including the removal of the restriction of public water and wastewater agencies to participate in the FIT Program." PG&E thus acknowledges that SB 380 removed the distinction between types of developers for feed-in tariff programs.

PG&E asks the Commission (pp. 9-10), should it require PG&E to open up its AB 1969 program, to clarify the minimum criteria to "establish and maintain service

under the public water and wastewater tariff and PPA." This clarification is not, however, necessary if the Commission requires instead that PG&E offer the E-SRG tariff to any entity qualifying for the remaining 100 MW in PG&E's AB 1969 program. With SB 380's removal of any distinction between types of developers, as acknowledged by the Commission in D.12-05-035 and by PG&E in the passage quoted above, this is not only the simplest solution but is also required by law. It would be contrary to law to acknowledge that the distinction has been removed but then still require non-water/wastewater entities to use a modified E-PWF PPA.

Similarly, PG&E's request (pp. 9-10) to clarify the process for offering parties PPAs under its re-opened AB 1969 program is mooted if the Commission requires PG&E to offer such parties the E-SRG PPA. The process for offering parties E-SRG PPAs should be exactly the same as the process PG&E has used to fill its current E-SRG queue.

We agree, however, with PG&E's request (p. 11) that the Commission grant PG&E authority to execute PPAs for applicants who request PPAs prior to the effective date of the SB 32 program. This authority is necessary to ensure that parties applying for an AB 1969 PPA aren't at risk for losing any benefit from their efforts if the SB 32 program "goes live" before completion of the AB 1969 PPA. We also urge the Commission to clarify what is meant by "effective date" for the SB 32 program. For example, is it the date that the SB 32 tariff is approved? Or the date that entities may apply for the SB 32 queue, which will come a few months later?

II. Conclusion

The Clean Coalition urges the Commission to eliminate the distinction between types of developers for AB 1969 programs, as it has already done for SB 32 programs, and to require PG&E to offer the E-SRG PPA to applicants who otherwise qualify.

Respectfully submitted,

TAM HUNT

April 25, 2013

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 24th day of April, 2013, at Santa Barbara, California.

Tam Hunt

Clean Coalition