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 PETITION FOR MODIFICATION OF D.13-05-034

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CLEAN COALITION PETITION FOR MODIFICATION OF D.13-05-034

The Clean Coalition respectfully submits this Petition for Modification (PFM) of D.13-05-034, pursuant to Rule 16.4. This PFM suggests a number of factual and other corrections to the Decision and one policy change.

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.

It is not our intent with this Petition for Modification (PFM) to impose any delay on the launch of the new program approved in D.13-05-034. We support the schedule set forth in the Decision. It is, however, our hope that the corrections and one policy fix we recommend could be implemented before the program awards its first PPAs in early November.

I. Factual and other corrections to D.13-05-034

The Decision makes a number of factual and other errors, as described below, which should be corrected.

A. Factual corrections

a. The Decision contains a mistake with respect to "Deemed Fully Subscribed"

The Decision, in describing how the last portion of each utility's allocation should be allocated, creates a new mechanism that will unintentionally result in "stranded megawatts." Per the Decision (pp. 17-18[1]), a bi-monthly allocation is "Deemed Fully Subscribed" when the next project in the queue that has expressed interest is larger than the remaining MW in the allocation. However, if the bi-monthly allocation drops below 3 MW, because that's all that is remaining for the product type at issue, and the next project in the queue is 3 MW, then every subsequent allocation will be "Deemed Fully Subscribed" and the last MW (up to 2.99 MW for each product type for each utility) cannot be contracted. Accordingly, we recommend that the Commission modify the Decision to require that each utility include in its tariff an exception to the Deemed Fully Subscribed rule for the last remaining MW of the product type, for circumstances where the allocation falls below 3 MW. Alternatively, the Commission could require this change in its resolution on the Advice Letters that were filed on June 24.

[1] Page cites are to the Word version of the proposed decision, which in the pdf version.

b. The Decision significantly misstates the procedural history of the IOU PPA negotiations

The Decision misstates the history of the SB 32 PPA negotiations significantly and we request that the Commission modify the Decision to correct the procedural record on this important matter. We are not at this point requesting any substantive changes with respect to the PPA. Rather, we are simply requesting that the Commission correct the procedural record.

The Decision rejects the Clean Coalition's proposed model PPA, which had the support of a number of parties, stating (pp. 32-33)[2]:

> Clean Coalition submitted this contract late in the consideration of this issue and in a manner that can be viewed as inconsistent with the process established by the assigned Commissioner and ALJ. Specifically, the model contract was not vetted by all parties; rather we received only a few reply comments on it. While Clean Coalition claims that its proposal will further streamline the contracting process, we find that the contract we adopt today, which has been vetted by parties over approximately 12 months, strikes the appropriate balance between necessary detail and brevity by including all the information needed to protect parties with substantial investments from potential risks.

The Decision is wrong in asserting that our proposed model PPA came late in the proceeding or was inconsistent with the process established by the Commission. As stated in comments on the PD and APD, we submitted the model PPA at the first opportunity to do so. The Decision states the following regarding the timeline of this proceeding (pp. 5-6):

> In response to a directive from the assigned Commissioner and the Administrative Law Judge (ALJ) to develop a single PPA for the FiT program with uniform provisions for all three IOUs, to the greatest extent possible, the IOUs filed a draft joint standard contract on February 15,

[2] The Decision added the following sentence to the same passage: "contract was not vetted by all parties; rather received only

> 2012.[3] Energy Division held a workshop to discuss the provisions of the draft joint standard contract on February 22, 2012. Parties provided verbal comments on the draft joint standard contract at the workshop and then filed written comments on March 5, 2012.
>
> On March 16, 2012, the IOUs submitted a revised draft to incorporate comments from the parties and proposed their own additional modifications.

Written comments on the IOU proposed PPA were indeed submitted on March 5, 2012, including comments by the Clean Coalition. Energy Division staff Jaclyn Marks provided this deadline in a Feb. 24, 2012, email, requiring parties, however, to submit comments on the IOU PPA only: "Parties should submit any redlined changes to the draft FIT contract to PG&E by March 5." The ALJ Ruling from Jan. 10, 2012, stated similarly (p .3, emphasis added): "Parties are permitted to file comments on the proposed standard form contract (as revised post-workshop) on March 21, 2012. No reply comments will be permitted."

There was no opportunity provided for alternatives to be presented by other parties prior to August 15, 2012, when the Clean Coalition did in fact submit its model PPA. The PD states further (p. 6):

> [O]n June 26, 2012, the ALJ directed the IOUs to conform the draft joint standard contract to the provisions of D.12-05-035. On the same date, the ALJ directed the IOUs to file draft FiT tariffs. These next filings, dated July 18, 2012, represented the third revised joint standard contract and the first proposed draft tariffs. Parties filed comments on August 15, 2012 and reply comments on August 29, 2012.

The Clean Coalition submitted redlines and numerous rounds of comments on the IOU proposed PPA. The large majority of our recommendations failed, however, to result in the desired changes during the "vetting" process. The IOUs, after party comments were submitted, issued a revised PPA that simply rejected the vast majority of recommended changes, without explanation. It was only

[3] This directive is set forth in Assigned Commissioner and Administrative Law Judge's Ruling Setting Workshop on a Utility Standard Contract for Program, issued January 10, 2012, R.11

after attempting to work with the IOUs over the course of the previous six months, to streamline and otherwise improve their proposed PPA, that the Clean Coalition felt it necessary to propose an alternative PPA. And as already stated, there had not been an opportunity to do so prior to this date.

Moreover, more than seven months elapsed from the filing of our proposed PPA and the PD. Seven months was more than enough time for vetting our PPA, yet Commission staff never provided an answer to our responses regarding an additional workshop or any other significant feedback on our model PPA.

Last, the Decision fails to mention a number of additional parties that supported the Clean Coalition model PPA over the IOU proposed PPA, including CALSEIA and Placer County APCD,[4]

Again, we request that the Commission correct the procedural record on this matter by modifying the Decision accordingly.

We also request the removal of Finding #12 (p. 70), which states (incorrectly): . "12. Clean Coalition's proposed FiT contract, referred to as a "model contract," to be used in lieu of the draft FiT joint standard contract, was submitted late in the consideration of this issue and submitted in a manner that can be viewed as inconsistent with the process adopted by the ALJ and Assigned Commissioner."

c. Other factual corrections

The Decision states (p. 37) with respect to Section 3.5.4 that the "Clean Coalition provides no rationale to support its recommendation" that collateral is not required after COD. However, the Clean Coalition did provide a specific

[4] http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M027/K720/27720401.PDF.

rationale for this recommendation on page 9 of opening comments "Clean Coalition comments on third revised SB 32 PPA," filed August 15, 2012.

The Decision refers repeatedly to the "CALSEIA and Clean Coalition Petition for Modification" when it is correctly titled the "Clean Coalition and CALSEIA Petition for Modification." The Clean Coalition was the lead author and initiator of the PFM. We previously pointed out this error in comments on the PD.

II. The bimonthly allocation should be changed to 6 MW rather than 5 MW

In addition to the above factual corrections, we urge the Commission to make one important policy change. The Decision changed the Proposed Decision's allocation of 10 MW for each bimonthly period to just 5 MW. The Clean Coalition recommends that the Commission adjust this figure to 6 MW because the 5 MW allocation will leave a number of projects that were designed as 3 MW projects with 2 MW PPAs or, more likely, no PPA at all because of the way the Decision allocates each bimonthly tranche.

Developers must expend significant sums of money and spend two or more years working on a project before applying for a PPA. Many developers have already done this in anticipation of the SB 32 program and its 3 MW size limit. To require developers to re-work their projects for a 2 MW PPA (5 minus 3 leaves 2 MW) will lead to significant difficulties and expense for developers. For example, interconnection applications for Fast Track prevent developers from changing the size of the project. This will require developers to re-apply for interconnection before seeking an SB 32 PPA. Engineering drawings will have to be re-done at considerable expense. And it is possible that environmental and construction permits will need to be re-done also. In sum, it is a significant burden to require developers to change a 3 MW project into a 2 MW project.

Additionally, the Decision makes it clear that any project in the queue that exceeds the capacity available in that bimonthly period must wait until the next bimonthly period. This will effectively result, since most projects will probably be 3 MW, in each bimonthly period having only 3 MW of capacity – and we are back to the problem that the Clean Coalition and CALSEIA highlighted in our joint PFM (the lack of enough capacity to effectively poll the market for a market price) which prompted the increased bimonthly capacity in the Decision, to 10 MW in the PD and APD and then 5 MW in the final decision. This is an additional strong rationale for increasing the capacity to 6 MW.

At 10 MW, which was the capacity proposed in the PD and APD, three full-size projects could be awarded contracts, leaving 1 MW left over – which in many cases wouldn't be utilized, due to the same concerns expressed above. We didn't previously raise this issue, with respect to the PD and APD, because we felt that three full-size contracts being potentially awarded in each bimonthly period constituted a reasonable polling of the market for the accurate market price. Reducing this figure from 3 full-size projects (9 MW) to just one project (3 MW), as the final decision does, dramatically diminishes the ability to accurately poll the market. The Commission already agreed with this rationale in expanding the bimonthly capacity from 3 MW to 10 MW (in the PD, pp. 10-11, and APD, pp. 10-11) and then to 5 MW in the final decision. Accordingly, the Commission should now follow up on its previous adjustments and correct this "stranded MW" problem. We strongly recommend that the Commission adjust the bimonthly allocation to 6 MW for PG&E and SCE.

We note also that the June 24 advice letters cement this stranded MW problem, highlighting the need for the Commission to resolve this issue in its resolution on the advice letters or in a decision on our Petition for Modification.

III. Conclusion

For the reasons stated above, we urge the Commission to adopt our recommendations herein.

Respectfully submitted,

TAM HUNT

June 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 25th day of June, 2013, at Santa Barbara, California.

Tam Hunt

Clean Coalition