

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

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

**REPLY OF ALLCO RENEWABLE ENERGY LIMITED TO THE COMMENTS OF
THE CALIFORNIA IOUs TO THE PETITION FOR MODIFICATION OF D.13-05-034
OF ALLCO RENEWABLE ENERGY LIMITED**

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December 2, 2013

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

Order Instituting Rulemaking to)	
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Pursuant to Rule 16.4(g) of the Commission’s Rules of Practice and Procedure and with the permission of ALJ DeAngelis granted on November 27, 2013 by email, Allco Renewable Energy Limited (“Allco”) submits this reply to the comments of Southern California Edison Company (“SCE”), Pacific Gas and Electric Company (“PG&E”) and San Diego Gas and Electric Company (“SDG&E”)(the “California IOUs”) on Allco’s petition for modification dated October 22, 2013 (the “Petition”) of D.13-05-034 (the Decision”).

Notably, the California IOUs make no comments on, and have made no arguments to contradict, the substance of Allco’s Petition. Rather the California IOUs only avenue for attack is the procedural correctness of the Petition. Specifically, the California IOUs lodge two objections. First, that the Petition is an untimely petition to modify other decisions of the Commission, and second, that the Petition does not provide the language for the proposed modifications.

With respect to the first issue, the California IOUs fail to appreciate that the Decision is the only operative Decision that implemented the replacement California Public Utilities Code¹ Section 399.20 tariff for the California IOUs based upon the Re-MAT. Section 399.20(c) requires all California utilities to maintain a standard tariff for electricity purchased from an electric generation facility (as defined in Section 399.20(b)). Much like a final judgment under California Code of Civil Procedure Section 557, the Decision is the operative decision that implements the final decision with respect to the Re-MAT. While prior decisions obviously contributed to the result of the Decision, it is the Decision that aggregates them all and requires the change in the Section 399.20 tariff of each of the California IOUs.

To the extent there is any question about that one only needs to read the summary on page 2 of the Decision: “This decision orders Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) to revise their Feed-in Tariff (FiT) programs to include a new streamlined standard contract *and revised tariffs*.” (emphasis added.)

It is the adoption of the revised tariffs and the standard contracts related thereto, both of which were adopted by the California IOUs pursuant to the Decision that Allco seeks to have modified to have those tariffs comply with the plain meaning of Section 399.20.

Moreover, the first issue raised in the Petition involves the first-come, first-served command of Section 399.20(f), and specifically whether the California IOUs can refuse to enter into a contract on the basis of the bi-monthly or energy-type allocation when Section 399.20(n) provides the only bases for the denial of a tariff request, which does not include the bi-monthly

¹ Unless otherwise stated, all references herein are to the California Public Utilities Code unless otherwise noted.

or basket allocation. As the Decision stated on p. 18, D.12-05-035 did not address the issue of whether an IOU must offer a contract to a developer even if the IOU has exceeded its bi-monthly megawatt allocation. *See also*, Findings of Fact 4 (stating “4. D.12-05-035 requires modification to indicate whether subscriptions beyond the allocated megawatts for a product type for each program period are permitted.”) As a result, the first issue raised in the Petition was first addressed by the Decision, and not by any prior decision.

Furthermore, the provisions of Section 1709 are not applicable here because the decisions that led to D.13-05-034 are part of the same proceeding. Section 1709 by its terms only applies to collateral actions or proceedings, not the same action or proceeding.

With respect to the second issue, in this proceeding the Commission has accepted petitions for modification without the petition providing the specific language changes when the issues that are sought to be modified are clear, as is the case here. However, Allco provides the following specific wording to carry out the requested modifications to the decision. Allco requests the following modifications to the Conclusions of Law of D.13-05-034. (Language to be added is underlined, language to be removed is struck through.)

8. The July 31, 2012 *Petition of the Solar Energy Industries Association for Modification of Decision 12-05-035* should be granted in part. As a result, D.12-05-035 should be modified to include the requirement that subscriptions beyond the allocated amount will ~~not~~ be permitted, and are mandatory at the price in effect for the relevant bi-monthly period until each IOU has exhausted its overall program limit (irrespective of the type of energy).

60. The daisy-chaining provision of the tariff and standard contract should be removed.

61. Each IOUs aggregate program allocation will be reduced only by the amount of PPAs previously executed under such IOUs Section 399.20 tariff, which is WATER in the case of SCE, E-PWF in the case of PG&E, and WATER in the case of SDG&E, and not by the amount of PPAs entered into by such IOUs under

the separate and distinct feed-in tariff which is CREST, in the case of SCE, E-SRG in the case of PG&E, and CRE in the case of SDG&E.

CONCLUSION

“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations omitted). For the reasons stated above and in the Petition, Allco petitions the Commission to modify D. 13-05-034 to reflect the plain and unambiguous terms of the statute as provided above and in the Petition.

Respectfully submitted,

/s/ Thomas Melone

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December 2, 2013

VERIFICATION

I, Thomas Melone, am the President of Allco Renewable Energy Limited and am authorized to make this verification on its behalf. I have read the foregoing *REPLY OF ALLCO RENEWABLE ENERGY LIMITED TO THE COMMENTS OF THE CALIFORNIA IOUs TO THE PETITION FOR MODIFICATION OF D.13 -05-034 OF ALLCO RENEWABLE ENERGY LIMITED* . The statements in the foregoing document are true based upon my knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of December 2013 at New York, NY.

/s/ Thomas Melone

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