

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

Application of San Diego Gas & Electric
Company (U902E) for Authority to
Implement Optional Pilot Program to
Increase Customer Access to Solar
Generated Electricity.

Application 12-01-008
(Filed January 17, 2012)

And Related Matters.

Application 12-04-020
Application 14-01-007

**REPLY COMMENTS OF CEJA, CLEAN COALITION, AND SELC ON THE
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE MICHELLE COOKE**

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Application of San Diego Gas & Electric Company (U902E) for Authority to Implement Optional Pilot Program to Increase Customer Access to Solar Generated Electricity.

Application 12-01-008
(Filed January 17, 2012)

And Related Matters.

Application 12-02-040
Application 14-01-007

**REPLY COMMENTS OF CEJA, CLEAN COALITION, AND SELC ON THE
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE MICHELLE COOKE**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Environmental Justice Alliance (“CEJA”), Clean Coalition, and Sustainable Economies Law Center (“SELC”) (collectively, the “Joint Parties”) respectfully submit these reply comments on the proposed *Decision Addressing Participation of Enhanced Community Renewables Projects in the Renewable Auction Mechanism and other Refinements to the Green Tariff Shared Renewables Program* (“Proposed Decision” or “PD”), dated April 12, 2016. In accordance with Rule 1.8(d), the Joint Parties have authorized SELC to file and serve this document on their behalf.

I. The Commission should revise the PD to mitigate the flaws of RAM solicitation.

The Joint Parties support CEJA’s proposed changes to the PD to include safeguards to avoid the delay or absence of deployed resources potentially resulting from a flawed RAM solicitation, considering the mechanism’s unproven track record for procuring resources similar to ECR/ECR-EJ projects.¹ For instance, the Commission could require the Energy Division to assess the RAM procurement process at a certain date in the future to examine if ECR/ECR-EJ projects fail to develop, and/or adopt a new procurement methodology that addresses the problems outlined in CEJA’s comments. The PD states that “the lack of participation in ReMAT” by ECR projects makes it clear that ReMAT “does not support the success of the

¹ CEJA Opening Comments on PD at 6-7.

GTSR program,” but the Commission fails to recognize that the Investor-Owned Utilities (“IOUs”) have delayed acceptance of ECR applications. Both Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (“SDG&E”) indicate that they are not currently accepting ECR applications,² and Southern California Edison (“SCE”) only began accepting applications on April 1, 2016.

The Joint Parties also disagree with the Office of Ratepayer Advocates’ (“ORA”) support for using RAM to procure ECR/ECR-EJ projects.³ Considering the prior finding in D.15-01-051 that a different procurement mechanism may be more appropriate, and the lack of a proven track record for RAM to procure small projects,⁴ there is no evidence in the record to support ORA’s conclusion that the use of RAM would be more affordable for participants.

Furthermore, the Commission should reject PG&E’s request to limit the capacity available for the ECR program,⁵ as it would be antithetical to the intent of SB 43 to expand access to the benefits of renewable energy to communities, particularly from facilities close to the source of demand and involving community participation.

II. There is no need to limit eligible renewable technologies to solar.

The Joint Parties support the PD’s opening of ECR eligibility to non-solar projects. In addition, the Commission should explicitly address the synergistic benefits of energy storage as stated in CEJA’s comments⁶ and make the eligibility of non-solar energy and renewable energy plus storage clear in the decision’s Conclusions of Law and Ordering Paragraph. PG&E and SDG&E suggest limiting the eligible renewable technologies in the ECR program to solar installations, claiming that it is premature to modify the renewable resource associated with ECR or other green tariff offerings. The Joint Parties oppose this suggestion, as there is no need to restrict the eligible technologies, either statutorily or technically, and doing so would eliminate potential cost-effective renewable generation. Contrary to SDG&E’s claim that no party has

² <https://www.pge.com/en/b2b/energysupply/wholesaleelectricssolicitation/RFO/RegionalSolarChoice.page>; <https://www.pge.com/en/b2b/energysupply/wholesaleelectricssolicitation/RFO/RegionalSolarChoice.page>; <http://www.sdge.com/share-sun-for-solar-developers>; <https://www.sce.com/wps/portal/home/business/generating-your-own-power/solar-power-for-business/Community-Green-Rates>.

³ ORA Opening Comments on PD at 2.

⁴ CEJA Opening Comments on PD at 6-7.

⁵ PG&E Opening Comments on PD at 3-4.

⁶ CEJA Opening Comments on PD at 4.

advocated for immediately opening the GTSR program to all renewable resources, the record proves otherwise.⁷

III. The pricing mechanism for unsubscribed energy payments should reflect the actual market value of the energy, not an inflated or deflated value.

The Joint Parties endorse the arguments made by CEJA with respect to the Default Load Aggregation Point (“DLAP”) as well as the value of the Renewable Energy Credit (“REC”).⁸ The DLAP is indeed too low to allow developers to recoup their investment. The Joint Parties also oppose SCE’s proposal to adopt a Locational Marginal Price (“LMP”) value in place of the DLAP. SCE, in part, advocates for the LMP because it would be so low in value as to incentivize developers to find subscribers. However, a wholesale price is already a lower-than-market price, providing the incentive for developers to find subscribers.

Finally, the Joint Parties disagree with PG&E regarding the use of the Green-e value for REC valuation. As CEJA illustrated in its opening comments, a settlement agreement between PG&E and Sierra Club stipulates that the Green-e value is unreasonable.⁹ It would therefore be unreasonable for the Commission to include the Green-e value when averaging party proposals.

IV. The PD should further define “preference” for EJ projects in RAM solicitation.

The Joint Parties support CEJA’s comments that the Commission must clarify, define, and detail the practical operation of the “preference” given to ECR-EJ projects during procurement, which will adequately “promote local renewable development benefits flowing to disadvantaged communities.”¹⁰ The Joint Parties also agree with the Solar Energy Industries Association’s (“SEIA”) comment seeking clarification as to how language of “least-cost best-fit” for EJ projects should be interpreted.¹¹

V. The term “Community” needs to be refined to ensure close geographical proximity of ECR projects to customers.

As noted in the comments provided by CEJA, the legislative intent of SB 43 requires that the benefits of solar resources be shared with residents of low-income communities of color.¹² CEJA’s proposal to engage in a case-by-case review helps to meet this intent by allowing for a

⁷ See, e.g., SELC Phase IV Track B Comments at 16-17.

⁸ CEJA Opening Comments on PD at 7-8.

⁹ CEJA Opening Comments on PD at 8.

¹⁰ CEJA Opening Comments on PD at 3 (citing PD at 15).

¹¹ SEIA Opening Comments on PD at 9.

¹² CEJA Opening Comments on PD at 5-6.

flexible examination of each project to ensure that ECR projects are actually reaching the targeted program beneficiaries. The Joint Parties also support CEJA's comments that in light of the decision to allow ECR projects in Imperial Valley—outside of SDG&E's service territory—the Commission should guarantee against further departure from a definition of community that is not based on an analysis of a specific community, which targets both proximity of energy generation to load and proximity of economic benefits to that community.

VI. The Commission should allow sub-500 kW projects to participate in the program, pending FERC approval of CAISO's March 4, 2016 tariff filing.

The Joint Parties support Clean Coalition's recommendation that the Commission should make participation of sub-500 kW projects contingent on FERC approving CAISO's proposed tariff amendment.¹³ The record before D. 15-01-051, Decision 15-01-051 itself, and the record in Phase IV of this proceeding have provided ample evidence of the necessity and feasibility of allowing sub-500 kW projects to participate in the GTSR program.

VII. The Commission should remove the AmLaw 100 securities opinion requirement and exempt certain groups from complying with any alternative legal opinion requirement.

The costs of the AmLaw 100 securities opinion far outweigh the benefits or risks. The Joint Parties support SELC's proposals to remove the requirement or replace it with a legal opinion requirement based on securities law experience, with an exemption for certain groups.¹⁴ As SEIA points out, the PD's assertion that the Commission would only replace the rule if there was agreement by all parties is also a legal error.¹⁵ The record offers a robust analysis of the relevant (but low) risk of securities litigation, as well as alternative safeguards other than the AmLaw 100 requirement.¹⁶ In fact, SCE acknowledged the concern that the requirement is financially prohibitive and offered an alternative that included a standard based on years of securities law experience.¹⁷ SCE also noted that the IOUs already included language in the ECR rider indemnifying the utility against any securities risk. Moreover, SCE agreed with SELC that the Commission should remove the no risk guarantee from the terms of the legal opinion.¹⁸

The Joint Parties do not agree with the need to require a firm to have at least 10 equity

¹³ Clean Coalition Opening Comments on PD at 2-5.

¹⁴ SELC Opening Comments on PD *Id.* at 4-8.

¹⁵ SEIA Opening Comments on PD at 11.

¹⁶ *See, e.g.*, SEIA Opening Comments on PD at 10-11 (reviewing evidence in record).

¹⁷ SCE Phase IV Track B Reply Comments at 5-6.

¹⁸ *Id.* at 7; SCE Opening Comments on PD at 11.

partners, but much of SCE’s Track B proposal is quite similar to SELC’s. The Joint Parties also disagree with SCE’s new proposal to replace the AmLaw 100 requirement with a requirement based on an “AV Preeminent” peer review from Martindale-Hubbell, as the weaknesses of that rating system have already been discussed in the record.¹⁹ Such a limitation would pose a particular barrier for disadvantaged communities and small businesses. If any legal opinion is required along with a limit on who can give that opinion, the standard must be based on attorney qualifications and should not exclude experienced attorneys simply because they are not rated.

VIII. To increase program affordability, the PCIA charge should be replaced with a zero-value placeholder until the existence and size of any rate shift can be determined, and the Commission should monetize additional value streams that emerge.

The record provides substantial support to improve program affordability, including by addressing the PCIA charge, governmental subsidy programs, and additional value streams. First, the Joint Parties support SEIA’s proposal to replace the PCIA charge with a zero-value placeholder until the existence and size of any rate shift is determined. We concur with SEIA’s illustration of the barriers imposed by the PCIA exit fee, and that “the PCIA in the rate design for the GTSR program is the primary driver behind the lack of affordability.”²⁰ Second, the Commission should investigate the possibility of added or legislative subsidies in order to ensure the success of the program.²¹ Third, the Commission should require the utilities to revisit the program through Advice Letters in order to monetize additional value streams that emerge.²² Addressing the affordability of the GTSR program is the single most critical issue at stake for the viability of the program and consistency with SB 43, as detailed in the record.

Respectfully submitted,
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¹⁹ See SELC Response to SEIA Safe Harbor Motion at 4-5.

²⁰ SEIA Opening Comments on PD at 3.

²¹ See CEJA Opening Comments on PD at 8. See also SELC Phase IV Track A Comments at 11.

²² See Clean Coalition Opening Comments on PD at 6.