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 THIRD REVISED POWER PURCHASE AGREEMENT

Tam Hunt
Attorney for:
Clean Coalition
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
(805) 214-6150

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The Clean Coalition is a California-based nonprofit project of Natural Capitalism Solutions. The Clean Coalition's mission is to implement policies and programs that accelerate the transition to a decentralized energy system that delivers cost-effective renewable energy, strengthens local economies, minimizes environmental impacts, and enhances energy security. The Clean Coalition drives policies to remove the top barriers to Wholesale Distributed Generation (WDG), which is defined as renewable energy systems connected to the distribution grid that sell all electricity produced to the local utility and serve only local load. Since local balancing of energy supply and demand is generally required when more than 20% of energy consumption is served by WDG, the Clean Coalition also advocates for policy innovations to support Intelligent Grid (IG) solutions, such as demand response and energy storage. The Clean Coalition is active in proceedings at the California Public Utilities Commission, the California Energy Commission, the California Independent System Operator, the Federal Energy Regulatory Commission, and other agencies that shape energy policy in California and other states. In addition, the Clean Coalition designs and implements WDG and IG policies and programs at the state, local, and utility level across the country.

The following is a summary of issues we've identified in the IOUs' Third Revised SB 32 PPA. A separate document will contain our preferred "Model PPA" approach as an alternative to the IOUs' proposed PPA.

Broad issues

- Utility PPAs have been undergoing a deleterious tendency toward extreme length and complexity. The proposed PPA in this proceeding is now 104 pages, almost a five-fold increase from a mere 22 pages for PG&E's previous AB 1969 FIT PPA. The current revised PPA is also more than twice as long as the 1-3 MW PPA under PG&E's Solar PV program. The Commission must stop this trend now because it imposes a substantial burden on developers in terms of legal costs in

dealing with such lengthy contracts – particularly when we consider the numerous other extremely burdensome requirements the utilities and the Commission are attempting to impose on developers in what should be a streamlined process for smaller RPS-eligible projects

  - "Contract bloat" is an issue in itself, though we fully recognize that clarifying issues that were not previously clarified can have merit, even when such clarifications add length. The problem is that there is no justification for a 4-5 fold increase in length in this particular PPA.

- We urge the IOUs and the Commission to keep in mind that the new SB 32 program is not only for projects of 3 MW; rather, it is for projects up to 3 MW so may well include projects significantly smaller than 3 MW, particularly if positive changes are made to the program details in the future that allow smaller projects to be economically viable as SB 32 projects. As such, we urge the IOUs and the Commission to keep this program as streamlined and accessible as possible, to ensure the widest possible participation.
- We have recommended numerous changes and simplifications to the PPA, but we also strongly recommend that a separate and further simplified PPA be developed for projects less than one MW, as is already the case for PG&E's solar PV program
  - However, an alternative to having a separate PPA for projects less than one MW is to be explicit about which provisions of the proposed PPA apply to projects less than one MW and which don't. We have indicated where we believe projects less than one MW should be exempt from proposed requirements
- The proposed PPA represents, in sum, a consistent subordination of the rights of Seller to the rights of Buyer. Numerous obligations are imposed on Seller that aren't symmetrically imposed on Buyer. In order to have a fair and effective PPA, we recommend the changes described herein and in the redlined PPA.
  - In general, these types of contracts should be symmetrical in terms of rights and obligations on the parties – except where the nature of the

transaction requires asymmetry. We have indicated where we believe the rights and obligations should be more balanced.

- In general, the PPA attempts to impose a massive ongoing paperwork and reporting burden on these small projects. This needs to be corrected and we have recommended many ways to do so. We shouldn't allow the paperwork burden to drown these small projects in what should be a streamlined program.
- Projects that are equal to or less than the minimum coincident load of the substation at issue should be "deemed eligible for Resource Adequacy" and thus eligible for the higher TOD values.
    - The Commission has authority to determine Resource Adequacy requirements. If projects are equal to or less than the minimum coincident load on the substation at issue then they should be considered deliverable because the power produced will stay behind the substation. As such, these projects should be eligible for Resource Adequacy and the higher TOD values.
- The Telemetering Cost Cap should apply to facilities one MW and above only, and telemetry costs for facilities less than one MW should be paid by the utility seeking to require telemetry
    - The burden on developers of requiring telemetry on any facility under one MW is not justified by the benefits of telemetry
- Forecasting should be managed entirely by each IOU because this is far more efficient and effective than having each Seller do it, and complying with different requirements for each IOU. Requiring Seller to pay a reasonable fee for forecasting services by the IOU is acceptable, but the actual work should be handled by each IOU and/or its consultants.
    - Alternatively , we recommend that each Seller is provided a choice, to either pay the required fee or provide its own forecasting. This would promote market competition and keep costs low.
- The SB 32 program is the first wholesale IOU program, at what may be a meaningful scale (depending on how many MW are consumed in the existing AB 1969 program for each IOU), for projects at 3 MW or less. As such, this program

should motivate the IOUs to change their business practices (as we discuss herein), where appropriate, in order to streamline procedures for smaller renewable energy projects. The Governor's 12,000 MW DG goal should be sufficient incentive for this change in mindset.

- Last, every burden the IOUs seek to impose on Sellers through this contract must be balanced against the risk alleged by the IOUs. In many cases, we argue that the risk does not justify the burden. If the IOUs feel differently, we urge the Commission to require the IOUs to produce empirical data supporting the alleged risk in each issue area. In short: the burden of proof is on the IOUs to justify each new provision in this contract and the Commission should not provide *carte blanche* to the IOUs to impose a massive number of new contractual requirements on Sellers under what should be a streamlined program.

Specific issues

Delays and extensions

Section 2.8.2: This section should be revised to allow a "day for day" extension of time when the utility misses interconnection process deadlines. There should be no limit on this extension because such extensions are entirely out of the control of Seller. Moreover, the decision that approves the PPA should also modify D.12-05-035 to remove the current 24+6 month deadline and replace it with the formulation just stated.

Section 2.8.4: The same revision should occur.

Section 2.8.2.4 As with Section 2.8.2, the PPA decision should not only modify the proposed PPA but also D.12-05-035, to allow for day for day extensions when the utility misses interconnection deadlines, under the same rationale just stated for section 2.8.2.

Section 2.8.4: Strike since there is no "no later than" COD under our suggested changes.

Section 2.9.1: Add "rebuttable presumption" clause as in our redlined PPA

Contract quantity

Section 3.2: This provision should be stricken as unnecessary and over-reaching. Alternatively, this section should apply only to projects one MW and above. If the IOUs object to these changes, the Commission should be require that they show data supporting the alleged risk requiring this level of detail regarding expected production (which is tied punitively to the "Guaranteed Energy Production" provision in section 12).

Delivery term

Section 3.5: We recommend that the PPA include a 25-year term option, as is the case for RPS contracts. While SB 32 only requires contracts be offered up to 20 years, nothing in the law prevents the Commission from adding a 25-year contract term, which may often be desirable for both Sellers and ratepayers, as well as Buyers, due to the benefits of locking in a PPA for an additional 5-year revenue stream and production of renewable power.

Section 3.5.4: Strike since no Collateral Requirement should apply after COD.

Billing

Section 3.7.4: delete language requiring Seller to invoice Buyer each month. This is way too burdensome and Buyer should simply issue payment automatically each month based on the meter reading. Alternatively, this provision should apply only to facilities larger than one MW.

WREGIS

Section 4.3: WREGIS obligations should be harmonized between utilities and we recommend that PG&E and SDG&E follow SCE's lead in handling this matter for all SB 32 PPAS. We understand that this is not currently PG&E's practice, but we again urge all

IOUs to modify their business practices in line with new policy directions such as the Governor's goal of 12,000 MW of DG. It is far more efficient for each IOU to handle this kind of task than to have each Seller do it. Ditto with section 4.3.9.

Resource Adequacy

Section 4.4.3 is overly broad and should be stricken in its entirety.

Compliance Expenditure Cap

Section 4.6: Compliance Expenditure Cap should be re-defined, as we suggest in our redline (emulating SEIA's earlier comments). Moreover, the cap should be limited to $5,000 annually, rather than $25,000, keeping in mind the need to limit fees for SB 32 projects in order to ensure access to the program for smaller projects as well as projects up to 3 MW in size.

EIRP

Section 4.7: Should only apply to facilities over one MW.

Covenants

Section 5.1.6: moved up from Seller warranties section so that it applies to both Buyer and Seller.

Section 5.3.2: Added a clarifier that this applies only to hydro projects.

Section 5.3.8: moved up to general representations and warranties section so that it applies to Buyer and Seller.

Sections 5.3.12 and 5.3.13 are over-reaching and don't belong in the PPA because they concern interconnection issues. Alternatively, if the IOUs feel that they should be in this PPA, these provisions should be justified further with empirical data.

Curtailment

Section 6.8.4: Strike the last sentence as redundant.

Reporting

Section 6.12.1 should require a report once every three months rather than one report per month. We shouldn't allow the paperwork burden to drown these small projects.

Section 6.12.4: should require Commission approval instead of simply Buyer "sole discretion."

Section 6.14 is over-reaching and should be stricken. As long as Seller is meeting obligations, Buyer should have no say in modifications to the facility. Alternatively, the language should be modified such that the IOU only has a consent right for changes that are material to the contract.

Insurance

Sections 10.1.2, .3 and .4, requiring insurance coverage beyond general liability, should be stricken as inappropriate for SB 32 projects. The point of SB 32 is to create an expedited and streamlined program for small renewable generators and requiring insurance beyond commercial general liability insurance is not streamlined. Section 10.2.6 should be modified accordingly.

Guaranteed Energy Production

Section 12 should be stricken in its entirety, or more, empirically-based, information should be provided by the utilities justifying this burden. Liquidated damages would punish the Seller twice because Seller would also forgo payments for power production – which should be incentive enough to ensure that Seller maintains its facility and produces power. To add this provision, the IOUs should produce evidence that this is not the case.

Credit and collateral requirements

Section 13 should be modified to require collateral only through COD. There is no guidance on collateral requirements in D.12-05-035 so the IOUs have inserted this requirement on their own volition. However, there is no need for collateral once the project is operational because, again, Seller is heavily incentivized through power payments to keep the project online and in optimal working order. Interconnection and construction deposits are applicable before the project comes online and these are reasonable requirements for ensuring completion in a timely manner. But there is no good rationale for a collateral requirement after COD.

Events of default and termination

Section 14.2.1.1: why does bankruptcy result in automatic default? PG&E's bankruptcy in 2001 did not result in automatic default for many of its contractual obligations and there doesn't seem to be a good rationale for this requirement here.

Section 14.2.2.8: This section should be stricken or justified by the IOUs, using empirical data that shows the harm this provision seeks to avoid. Seller should have the right to modify its Facility as long as contractual obligations are otherwise met.

Section 14.3: We've added a Cure period provision, shown in the red-line.

Section 14.4: We've added a clause re Commission approval when sought by Seller for any Settlement Amount.

Right of first refusal

Section 14.8: This section should be stricken as asymmetrical and unfair, or the IOUs should be required to produce additional empirical data to justify this restriction.

Transmission cost termination right

Section 14.9: The final decision increased the transmission cost termination amount to $300k, which is still problematic for reasons we have raised in our Application for Rehearing. We recommend striking this section in its entirety. The decision approving the PPA should also modify D.12-05-035 such that the "strategically located" requirement is met if the project output is equal to or less than the minimum coincident load on the substation at issue. If such modification was made, the need for a transmission cost termination right is removed. Utility interconnection studies can be inaccurate by an order of magnitude, so it makes little sense to establish a fixed monetary limit like the $300k figure.

Forecasting

Section 15.2: all forecasting should be Buyer's responsibility because of the dramatic increase in efficiency if Buyer handles all forecasting for its project portfolio rather than each Seller attempting to do so individually.. We've also redlined Appendix D – Forecasting Requirements.

Release of information

Section 16.2: strike as ridiculous, over-reaching and perhaps illegal.

Assignment

Section 17.1 should be modified to allow assignment but require that Seller notify Buyer of such. There is no good rationale for requiring Buyer consent for assignment, which would constitute another hurdle to an efficient and free-flowing market for renewable energy.

Dispute resolution

Section 19.1 should be modified to eliminate "sole" reliance on the section 19 dispute resolution procedure and allow other means for dispute resolution if required, including court remedies.

Telemetry

Appendix F (PG&E and SCE): A limitation on ongoing costs in addition to installation costs should be added. The proposed $20K limit only applies to installation costs. Seller should not be required to pay monthly costs (e.g. for a T1 line) over $100/month.

Definitions

"Site Host Load": removed reference to PUC section 218(b) because it is not clear what this reference achieves.

Appendix D

We have made a number of changes in line with our recommended changes to forecasting requirements.

Respectfully submitted,

TAM HUNT

Attorney for:
Clean Coalition
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
(805) 214-6150

Dated: August 15, 2012

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 15th day of August, 2012, at Santa Barbara, California.

Tam Hunt

Clean Coalition