

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 OPENING COMMENTS ON PROPOSED AND  
ALTERNATE DECISIONS RE SECTION 399.20 PPAS AND PETITIONS FOR  
MODIFICATION

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## CLEAN COALITION OPENING COMMENTS ON PROPOSED AND ALTERNATE DECISIONS RE SECTION 399.20 PPAS AND PETITIONS FOR MODIFICATION

The Clean Coalition respectfully submits these opening comments on the Commission's Proposed and Alternate Decisions on the section 399.20 tariffs, PPAs and Petitions for Modification.

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.

### **1. Summary of Recommendations**

A summary of our comments follows:

#### *General issues*

- We highlight again the fact that the burden of proof falls upon the IOUs to demonstrate, with evidence, that any and all changes to the base PPA (PG&E's E-SRG PPA) are necessary to meet the needs of the new program.

In the large majority of cases, this has not been the case. Moreover, the PD takes the position that the burden of proof falls on those objecting to changes to the base PPA. The Commission should re-consider this key issue with respect to the PPA

- The PD drafters apparently overlooked the Clean Coalition's Sept. 10, 2012, reply comments on the PPA, which contained, at Commission staff suggestion, substantial evidence regarding the burdens that the IOU proposed PPA would impose on developers. This oversight alone should warrant serious reconsideration of the PD's conclusions regarding the IOU PPA.

#### *Program design issues*

- The Clean Coalition supports expansion of each bi-monthly bucket to 10 MW, but this is only part of the required solution.
- We strongly oppose the PD's suggestion regarding exceeding the capacity allocation in a given bi-monthly period. The PD states that if the next project in the queue exceeds the remaining allocation in the appropriate bi-monthly period, that project will not receive a PPA and the allocation will be deemed fully subscribed. Under this approach, a 3 MW project that is literally one kilowatt above the remaining allocation would be denied a PPA and would have to wait for the next bi-monthly period. We recommend, instead, that the developer be awarded a PPA at the original project size, during the next bi-monthly period, but at the original contract price.
- The Commission must include a locational adder before the SB 32 program commences. The PD states that determining the locational adder price is underway at the Commission. This is a partially accurate statement, but it has been two months since the last workshop was held, and no guidance has been provided as to when post-workshop comments

are due, let alone when the Commission will rule on this issue. The Clean Coalition feels, however, that it is contrary to law to commence the SB 32 program without adding value for the locational adder

- We also urge the Commission to clarify what will happen if an IOU's SB 32 program is terminated, due to all MW being subscribed, but one or more projects fail after being awarded a PPA. We recommend that the newly freed-up capacity from failed projects should be re-offered to developers in a new bi-monthly allocation.
- We also urge the Commission to describe what happens when each IOU's program ends; specifically, what is the procedure for reviving the ReMAT after the initial allocation is fully subscribed? SCE is unlikely to have any MW even when their ReMAT program begins, SDG&E's program will last just one bi-monthly period, and PG&E's program may be fully subscribed (at least for peaking as-available) within just eight months. These facts weigh heavily in favor of the Commission providing at least some guidance as to the next steps after each IOUs' allocation is fully subscribed
- We support elimination of the second program phase, but we are concerned that the decision only notes this elimination (p. 16) and appears to omit any discussion of the elimination (likely an error in the PD)
- The PD should modify the language on the "strategically located" requirement to incorporate the buy-down right that is already part of the PPA
- Certain terms in the tariff regarding "daisy chaining" should be revised
- The Commission should clarify that projects between 1 and 3 MW may bid into RAM if their ReMAT product type is exhausted for the IOU at issue

*PPA issues*

- The Clean Coalition strongly opposes the PD's summary rejection of our proposed Model PPA. The PD rejects our model PPA, failing to note the strong support it received from a number of parties, as being untimely. To the contrary, we submitted our model PPA at the earliest opportunity to do so. We strongly urge the Commission to reconsider its rejection of our model PPA
- The PD makes much of the IOU PPA vetting process. However, this process was highly ineffective because the IOUs rejected almost all party suggestions, without explanation, and it was only after we realized that our voice was not being heard that we submitted our model PPA – with the support of a number of parties
- Moreover, the PD ignores significant evidence of harm to developers – which evidence we provided expressly upon the Commission's request – that we provided in our reply comments on the PPA, in terms of the very significant burden from the numerous paperwork and reporting requirements that the IOU PPA imposes
- The PD denied the Clean Coalition's recommended COD extension provisions, stating that we provided no new information on this issue. However, we suggest at this time new information consisting of recent experience with SCE's CREST Program, where interconnection delays are putting a number of executed PPAs at risk. The PD also gets it wrong in stating that we advocated for a longer COD deadline. Rather, we have advocated for a shorter COD (18 months vs. 24 months), but also for unlimited extensions for issues outside the control of the developer, such as interconnection delays. It is very poor program design and unfair to developers to hold them accountable for problems outside of their control, particularly when large sums of money are at stake

- The PD did not adopt a price floor, as we had recommended, stating that the proposed program “already incorporates several mechanisms to guard against unreasonably low pricing.” However, it is not clear what these mechanisms are and we urge the Commission to clarify this issue further.
- The PD defines “streamlined” as combining the IOU PPAs into a single document. While we acknowledge that this is a benefit, only a few pages of the combined PPA are devoted to differences between the IOUs – which doesn’t go very far in justifying a PPA that is more than four times longer than the base AB 1969 PPA. Also, a combined PPA is irrelevant to developers of a single project because they are only concerned about the IOU in their area. This program should be accessible to a wide range of developer types, including developers of single projects, and a highly complex and burdensome PPA weighs against accessibility
- We strongly recommend, as a middle ground solution, that the Commission require the IOUs to exempt projects 1 MW and below from the more burdensome aspects of the PPA
- With respect to Collateral Requirements after COD, there is no need for this requirement, and it has not been required in previous FIT PPAs. Contrary to what the PD states, ratepayers are not at risk because if SB 32 projects don’t deliver power they won’t be compensated.
- Monthly invoices – we did not protest this issue in order to get a longer billing period, as the PD incorrectly states. Our point, rather, was that developers should not be required to issue invoices at all. IOUs should simply pay on the metered quantity. This is how billing works in net metering and there is no compelling reason why it should be different for wholesale projects.
- With respect to the Qualified Reporting Entity issue, we urge the Commission to accept that this is the time at which the “paradigm” discussed should change. The IOUs should be acting as the QRE in a

consistent manner. Again, this is a provision that harms smaller developers.

- There appears to be an error and a misunderstanding in the PD's treatment of compliance expenditures for CEC-related obligations (pp. 43-44). The PD states: "Under this term, amounts exceeding \$25,000 are the seller's costs." This should be "buyer's costs." Also, it is not clear if the Commission understands that the \$25,000 cap that the IOUs recommend is for annual expenditures, not an aggregate cap for the life of the contract. As an annual expenditure, the Clean Coalition reiterates that this is a very high potential cost for projects that may in many cases be significantly smaller than 3 MW.
- Re section 6.12, monthly reporting, the PD states erroneously that we did not provide any further rationale for our objection to allowing the IOUs to require monthly reporting. To the contrary, we stated explicitly, in Sept. 10, 2012, reply comments on the PPA, the likely time burden that this will impose on developers. More generally, it appears that the drafter of this section of the PD missed the fact that we filed reply comments on the PPA and tariffs on Sept. 10, 2012, since our reply comments are never referenced in this section of the PD (but are cited many times in the section on the tariffs).
- With respect to insurance requirements, the burden is on the IOUs to demonstrate why the highly onerous insurance requirements are necessary – the burden is not on parties to demonstrate why the suggested requirements are overly burdensome. The Commission expressly directed the IOUs to use the AB 1969 PPA as the basis for the ReMAT PPA and the IOUs have not explained why these additional insurance requirements are necessary for ReMAT projects and were not necessary for AB 1969 contracts.
- With respect to assignment of the PPA, we strongly object to the PD's decision to provide discretionary permission to the IOUs. In our

experience, in every circumstance that IOUs are granted discretion they will choose the most restrictive possible option, which may lead to many disputes regarding assignment. We recommend instead that assignment be allowed as the default, if the assignee meets the required criteria, and an IOU may object to such assignment through the advice letter process.

- With respect to telemetry costs, the PD seemed to miss the distinction between construction costs and costs over the life of the contract. The \$20K cap is acceptable as an aggregate over the life of the contract. It is important, however, that the PPA not just apply the cap to initial construction costs, but to life-time project costs

#### *Other issues*

- We support deferring amendments required by SB 1122 until a later decision. We encourage the Commission to include the full required locational value price component, as required by SB 32, in the same decision that addresses SB 1122
- The PD refers to the “CALSEIA and Clean Coalition petition for modification.” This should be changed to the “Clean Coalition and CALSEIA petition for modification” because the Clean Coalition was the lead author of this document and is listed first on the document itself.
- Last, the Clean Coalition agrees with the Alternate Decision that any change to SB 32 program capacity can be achieved through the advice letter process and without a Commission decision

## **2. Discussion**

### **a. General comments**

- i. The burden of proof is on the IOUs to show why any changes to the base AB 1969 PPA are required**

The Commission required that the IOUs start from PG&E's E-SRG PPA in creating their preferred ReMAT PPA. Accordingly the burden of proof is on the IOUs to show that there is a real problem, with evidence, that requires changes to the base PPA, in each and every instance that the IOUs deviate from the E-SRG PPA, because the Commission expressly directed the IOUs to use this earlier PPA as a template. In most cases that the IOUs seek to impose additional burdens on developers, such evidence has not been presented. The PD approaches the IOU proposed PPA as though the burden should be on parties opposing changes to the E-SRG PPA – reversing the appropriate burden of proof. We strongly urge the Commission to reconsider this approach.

As such, the development process of the PPA was improperly conducted and many of the PD's conclusions with respect to the PPA are erroneous. At a minimum, those provisions that were protested by parties should be decided in favor of the protests where the IOUs provided no evidence in support of their position.

**ii. Some party comments were missed by the PD**

It appears that the PD did not consider our September 10, 2012, reply comments at all in its consideration of the IOU proposed PPA. The PD does cite and discuss our Sept. 10 comments numerous times with respect to the draft tariffs, but not once with respect to the PPAs – which was the primary topic of our Sept. 10 comments. Moreover, our Sept. 10 comments contained numerous instances of specific evidence regarding the burdens imposed by the IOU PPA – evidence included at the specific request of Commission staff. Therefore, it appears that the drafter of the PD section on the PPAs simply missed our Sept. 10 reply comments, an oversight that should be remedied. This oversight alone warrants significant reconsideration of many of the PPA-related conclusions in the PD.

**b. Program design issues**

**i. The Clean Coalition supports expansion of each bi-monthly bucket to 10 MW**

The PD states (p. 10):

In response to the petitions for modification, we find that the megawatt allocation process adopted in D.12-05-035 may hinder the advancement of the program because it may result in too few megawatts being offered during each bi-monthly program period. In some cases, as SEIA, Clean Coalition, and CALSEIA recognize, less than one megawatt would be offered for each product type per bi-monthly program period under the process adopted in D.12-05-035. As such, we further find that the process adopted in D.12-05-035 may not result in sufficient opportunities for projects up to three megawatts to participate in the program because, in many instances, less than three megawatts would be offered by the IOUs.

We appreciate the PD's recognition of the problem we raised in our petition for modification (filed jointly with CALSEIA). Raising each bucket to 10 MW will indeed provide a more accurate polling of the market in terms of an appropriate price point. This is, however, only one step in the required solution, as described below.

**ii. The Commission should provide guidance on next steps after an IOU's allocation is fully subscribed**

While the increase to 10 MW for each bucket will do much to improve the polling of the market for an accurate price signal, it will obviously lead to rapid exhaustion of each utility's allocation, at least for certain product types, as described in the below table, which shows exhaustion occurring either

immediately (for SCE), two months (for SGG&E) or as fast as just eight months (PG&E).<sup>1</sup> The PD states (p. 25):

In response to the [Clean Coalition and CALSEIA PFM], we do not modify D.12-05-035 to increase the overall number of megawatts in the FiT program. Instead, we seek to address the concerns raised by CALSEIA and Clean Coalition related to the limited number of total megawatts in the FiT program by increasing the capacity offered for each product type during each bi-monthly program period to 10 MW, as described above in Section 4.1 herein.

However, it is very likely that substantial parts of the new SB 32 program will be either “dead on arrival” (for SCE, since their AB 1969 capacity is already fully subscribed), or fully exhausted in as little as two months, for SDG&E, and as little as eight months for PG&E.

Table 1. *Exhaustion rates for IOU SB 32 allocations (sources: IOU websites for AB 1969 programs\*)*.

	Peaking as-available	Non-peaking as available	Baseload
SCE	0.0	0.0	0.0
PG&E	33.3	33.3	33.3
SDG&E	8.5	8.5	8.5
	Bi-monthly periods remaining for peaking as-available	Bi-monthly periods remaining for non-peaking	Bi-monthly periods remaining for baseload
SCE	0	0	0
PG&E	4	4	4
SDG&E	1	1	1

\* SCE’s AB 1969 capacity is fully allocated, resulting in 0 MW for ReMAT.

It doesn’t make much sense to create a program that is either dead on arrival or exhausts available capacity in as little as two months without any mention of what the next steps will be upon exhaustion. If the Commission feels that new legislation is required to create a larger program, and to avoid a defunct program just a few months after it is created – rather than using the Commission’s

<sup>1</sup> These figures may change significantly due to SCE’s Advice Letter 2870-E, which resolution may lead to additional MW being available for ReMAT, and PG&E’s Motion for Clarification (April 5, 2013), which may lead to a reduction in MW for PG&E’s ReMAT. The final result of these changes, however, may be a “wash” in terms of total ReMAT allocation between IOUs.

inherent authority to enlarge the program – the final decision should say so. Given the interest in Distributed Generation from the Governor, Legislature, state agencies, and many advocates it seems very likely that new legislation will be forthcoming once it is clear that the ReMAT program will have so little capacity at its inception.

**iii. The Clean Coalition objects to the PD's solution for over-subscriptions in a bi-monthly period**

We strongly oppose the PD's suggestion regarding exceeding the capacity allocation in a given bi-monthly period (p. 18). The PD states that if the next project in the queue exceeds the remaining allocation in the appropriate bi-monthly period that project will not receive a PPA and the allocation will be deemed fully subscribed. Under this approach, a 3 MW project that is literally one kilowatt above the remaining allocation would be denied a PPA and would have to wait for the next bi-monthly period, and accept a lower PPA price. We recommend, instead, that the developer be awarded a PPA at the original project size, in the next bi-monthly period, but at the original PPA price (if there is sufficient program capacity remaining). This solution balances far better the competing concerns that the PD cites.

The PD overlooks the fact that the downside of the PD's proposal is not simply waiting an additional two months for a PPA, but also having to accept a PPA price that may be far lower (particularly if this deferral comes later in the program, when the price drops can be far more than 0.4 c/kWh). If, for example, the price has already dropped from the first to the second bi-monthly period and the scenario that the PD describes occurs, the developer at issue may be faced with a 0.8 c/kWh price drop if the prior two price periods have seen sufficient market interest to trigger a price drop. This drop could easily be the difference between economic viability and non-viability.

**iv. The Commission must include a locational adder before the SB 32 program commences**

The Commission must include a locational adder before the SB 32 program commences. The PD states that the process for determining the locational adder price is underway at the Commission. This is a partially accurate statement, but it has been two months since the last workshop was held and no guidance has been provided as to when post-workshop comments are due, let alone when the Commission will rule on this issue. The Clean Coalition feels, however, that it is contrary to law to commence the SB 32 program without adding value for the locational adder – particularly considering the fact that each IOU’s program will be exhausted so quickly. This is a clear violation of SB 32’s requirement that ratepayers remain economically indifferent from SB 32 projects (Section 399.20(d)(3)).<sup>2</sup> Given the protracted history of this proceeding, it is highly likely that program capacity for significant components of the program will be exhausted before the locational adder pricing is determined – a legally actionable problem in implementation.

Even more troubling is the likelihood that the locational adder will be available for some SB 32 projects and not others, giving rise to a potentially significant difference in compensation for exactly the same product, again conflicting with the ratepayer indifference requirement. This is the case because ratepayers are not indifferent if SB 32 projects are being provided different rates depending on whether or not they obtain a PPA before or after the Commission has implemented the locational adder price component. The Commission has had almost 3.5 years now to implement SB 32 and it is contrary to law to begin the program without this pricing component included.

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<sup>2</sup> This section states: “The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff.”

**v. The Commission should clarify what happens if an IOU's ReMAT program is terminated but new capacity is made available due to terminations**

We urge the Commission to clarify what will happen if an IOU's ReMAT program is terminated, due to all MW being subscribed, but one or more projects fail after being awarded a PPA. We recommend that the newly freed-up capacity from failed projects be re-offered to developers in a new bi-monthly allocation.

**vi. The Commission should clarify that it is eliminating the second program phase**

We support elimination of the second program phase, but are concerned that the decision only notes this elimination (p. 16) and appears to omit any further discussion of the elimination (this is likely an error in the PD). The final decision should explain this elimination.

**vii. The "strategically located" requirement should be modified to allow for the buy-down right in the PPA**

While the PPA contains a buy-down option for situations where the network upgrade costs exceed \$300,000 – an allowance that the Clean Coalition supports – the PD's requirements regarding "strategically located" don't acknowledge this buy-down right (p. 27). As such, a strict reading of the PD would prevent any project that has over \$300,000 in network upgrade costs from being eligible and would conflict with the buy-down right in the PPA. As such, we recommend that the PD be modified to reflect this buy-down right.

**viii. The Commission should clarify that projects between 1 and 3 MW may bid into RAM if their ReMAT product type is exhausted**

Under D.12-05-035, RAM is open to projects 3-20 MW once ReMAT begins. However, with MW allocations likely to be zero or exhausted quickly for ReMAT, at least in certain product categories, we urge the Commission to clarify in the final decision that when a product category is exhausted projects between 1-3 MW for that product category will be able to bid into RAM. If this allowance is not provided, there will be no other recourse for these projects to obtain a PPA.

**3. Tariff issues**

**i. Certain terms in the tariff regarding “daisy chaining” should be revised**

The words “at its sole discretion” should be deleted from the first sentence of the Tariff provision on Daisy Chaining. There is no authority for this phrase in the PD, and this language raises issues (including the standard of review and burden of proof on an appeal from a denial of tariff) that were not previously raised or decided in this proceeding.

Just as the Seller Concentration test (now proposed in the PD to be dropped) would have, for project financing reasons, been based on “sponsor equity” and not tax equity or other third party investor ownership, the Tariff provision on daisy chaining should be modified to provide that the term “Affiliate” shall be interpreted to exclude “Affiliates” of the Applicant who are merely providers of project finance equity, as opposed to development capital.

The tariff phrase “has been or is being developed by” the Applicant or its Affiliates raises three measurement date issues. First, it would unfairly prejudice the first project by a developer in a particular area before it is even known

whether any other nearby project is viable. Second, this phrase could be interpreted to include parties that had been involved in the early development of the site for an electric generation facility, who are still actively developing other nearby projects, but who are not initially affiliated with the Applicant. Third, reading the “has been” criteria literally, the tariff provisions on “Change in Eligibility” would operate to cause a project to forfeit its PPA if, at any time during the long term of the PPA, the developer of the Project and the previously unaffiliated developer of a nearby project happened to come under common control through upstream acquisition, merger or similar transaction within the industry, a risk that would surely chill project financing.

To provide further certainty for developers and comfort for financiers concerned about what “same general location” means, we recommend that the tariff provision at issue be modified by adding a “safe harbor,” with a bright line tied to substations and distribution circuits. With all of the foregoing modifications implemented, we suggest that the full tariff provision would read as follows:

Daisy Chaining. The Applicant must provide to [IOU] an attestation that the Project is the only exporting project being developed, owned or controlled by the Applicant on any single or contiguous pieces of property. [IOU] may determine that the Applicant does not satisfy this Eligibility Criterion if the sum of the effective capacity of the Project, plus the effective capacity of any other project that has already received and currently retains an E-ReMAT Queue Number, would exceed 3 MW in the aggregate, if both projects appear to be part of a larger installation in the same general location that has been or is being developed by the Applicant, or the Applicant’s Affiliates at the time of Applicant’s PPR. Notwithstanding the foregoing sentence, if the Applicant’s attestation is true, and no other project developed by Applicant, or by Applicant’s Affiliates at the time of Applicant’s PPR, is interconnected or proposed to be interconnected to the same substation or the same distribution circuit as the Project, then [IOU] shall have no authority to deny the request for tariff. For purposes of this Eligibility Criterion, providers of project finance equity that are not otherwise affiliated with the Project sponsor or developer shall be deemed not to be Affiliates of the Applicant.

#### 4. PPA issues

##### i. The Clean Coalition strongly opposes the PD's rejection of our model PPA

The Commission rejects the Clean Coalition's proposed model PPA, which had the support of a number of parties, stating (p. 34):

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. 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.

However, the Commission is wrong in asserting that our proposed model PPA came late in the proceeding or was inconsistent with the process established by the Commission. We submitted the model PPA at the first opportunity to do so. The PD states the following regarding the timeline of this proceeding (p. 6):

The IOUs filed a draft joint standard contract on February 15, 2012. 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 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 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. 7):

[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 to result in the desired changes during the “vetting” process. The IOUs issued a revised PPA that simply rejected the vast majority of party recommended changes, without explanation! It was only 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 has elapsed since the filing of our proposed PPA. We have attempted to obtain feedback from Commission staff many times since filing our PPA, following up on our original suggestion that an additional workshop should be held to vet our model PPA and compare it to the IOU PPA. Seven months was more than enough time for this purpose, yet Commission staff never provided an answer to our responses regarding an additional workshop or any other significant feedback on our model PPA.

The PD also states (p. 34): “Several parties state their opposition to Clean Coalition’s contract.” There is no citation for this statement and, to our knowledge, the only parties expressing opposition to our proposed Model PPA

are the utilities. Moreover, the PD fails to mention that a number of parties supported the Clean Coalition model PPA over the IOU proposed PPA, including CALSEIA, Placer County APCD,<sup>3</sup> Sierra Club,<sup>4</sup> and AECA<sup>5</sup>.

In short, the PD misstates the history regarding our model PPA, continues to ignore numerous substantial problems with the IOU PPA, and fails to do justice to the large amount of effort that the Clean Coalition and our partners expended in creating the model PPA. The Clean Coalition feels that the Commission may face legal action if it does not take seriously the need to create a streamlined PPA for SB 32 projects and we strongly urge the Commission to reconsider its summary rejection of our model PPA.

**ii. There is nothing about the IOU PPA that is “streamlined”**

The PD states (p. 5):

Today’s decision addresses these previously deferred components of the program and orders Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively referred to as utilities or IOUs) to revise their FiT programs to include a streamlined joint standard contract and revised tariffs. The streamlined joint standard contract and tariffs incorporate the FiT program requirements adopted in D.12-05-035, as modified.

Calling the IOU proposed PPA “streamlined” doesn’t make it so and it is in fact absurd and Orwellian to call it streamlined. As the Clean Coalition described in its detailed comments on the PPA, the PPA is literally more than four times longer than the previous contract even when we include all relevant documents for a full apples to apples comparison. We challenge the Commission to explain

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<sup>3</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M027/K720/27720401.PDF>.

<sup>4</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M027/K796/27796839.PDF>.

<sup>5</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M027/K799/27799351.PDF>.

how a document that is now more than four times longer than the previous FIT PPA should be described as “streamlined.”

The PD is wrong when it asserts that the proposed PPA is not overly long when all relevant documents are included. As we described in opening comments, our previous calculation that the PPA is more than four times as long included all relevant attachments and documents. The PD itself states (p. 31): “This [standard contract] process is ideal for the FiT program because smaller developers have, perhaps, more limited resources to devote to the process of obtaining contract approval from the Commission.” While, again, the Clean Coalition agrees that an automatically approved PPA is an advantage for FIT developers, by the same sentiment just expressed by the Commission in this quote, the IOU’s proposed standard PPA is extremely burdensome.

The PD defines “streamlined” as combining the IOU PPAs into a single document. While we acknowledge that this is a benefit, only a few pages of the combined PPA are devoted to differences between the IOUs – which doesn’t go very far in justifying a PPA that is more than four times longer than the base AB 1969 PPA. Also, a combined PPA is irrelevant to developers of a single project because such developers are only concerned about the IOU relevant to their project. The ReMAT program should be accessible to a wide range of developer types, including developers of single projects, so, again, this issue weighs heavily in favor of the Clean Coalition’s model PPA.

Moreover, the PD ignores significant evidence of harm to developers – which evidence we provided expressly upon the Commission’s request, in our reply comments on the PPA – in terms of the very significant burden from the numerous paperwork and reporting requirements that the IOU PPA imposes.

As additional evidence, SCE’s Advice Letter 2877-E (filed April 2, 2013) seeks

approval of three PPAs under the current FIT program that are 27 pages in length (see attachments to the advice letter), with all appendices included. It is difficult to see how these projects that SCE seeks to have approved for new AB 1969 1.5 MW PPAs are qualitatively different than SB 32 projects of three MW and less – particularly in so pronounced a manner that requires the contract to be four times the length of the contracts SCE seeks to have approved under AB 1969.

**iii. The Commission should either require a separate contract for projects under 1 MW or order that a number of requirements from the PPA do not apply to projects under 1 MW**

The PD states (p. 35):

CALSEIA states that a second simplified standard contract is needed to facilitate smaller projects (under 1 MW). CALSEIA suggests that a 500 kW project is unable to meet the same insurance, telemetry, forecasting, meteorological and collateral requirements as a 3 MW project. For now, we will not consider creating another standard contract. We have adopted a process, which includes the joint standard contract for the FiT program, that is efficient and streamlined. Creating an additional contract at this point will unnecessarily complicate the administration of the program and provide limited, if any, additional cost savings for developers.

The Clean Coalition also called for a separate contract for projects under 1 MW, or for the standard PPA to include sections that apply only to projects larger than 1 MW, though our recommendations are not mentioned in the PD on this point.

Again, there is nothing “efficient and streamlined” about the IOU proposed PPA when it is more than four times the length of the baseline, PG&E’s AB 1969 PPA. To the contrary, the IOU PPA imposes a flood of additional paperwork requirements and costs on developers, which are asymmetric, inessential and unfair. Again, the burden of proof is for the IOUs to demonstrate, with evidence, that each and every proposed change to the base PPA is necessary. They have not met this burden in most instances.

At this point in the proceeding, it seems that exempting projects under 1 MW from the more burdensome requirements in the IOU PPA would be the most feasible path forward. Adding such exemptions to the IOU PPA would not take much time, and it would achieve much of the benefit of having a truly streamlined PPA because many sections of the PPA simply won't apply to projects under 1 MW. We again strongly urge the Commission to consider this middle ground solution.

**iv. Section 6.12 Reporting and record retention requirements should be reduced**

We have lingering concerns about a number of specific PPA provisions, as described in this and the following sub-sections.

The PD states (p. 48):

Clean Coalition states the requirement for reporting and record retention as overly burdensome and a financial hardship. Section 6.12.1 of the draft joint standard contract provides "Seller shall provide Project development status reports in a format and a frequency, which shall not exceed one (1) report per month, specified by the Buyer." Specifically, Clean Coalition states that Section 6.12.1 should require less frequent reports, and Section 6.12.4 should require Commission approval instead of simply buyer's "sole discretion." Clean Coalition provides no further rationale to support its request.

However, the Clean Coalition did provide a specific rationale and evidence for this recommendation. We stated in reply comments on the third amended PPA (Sept. 10, 2012, p. 12):

Reporting and Record Retention (Section 6.12.1): We shouldn't allow the paperwork burden to drown these small projects. This is a straightforward issue and doesn't require any concrete example beyond the fact of the matter that requiring monthly reporting is three times more burdensome than the alternative quarterly reporting that the Clean Coalition proposes.

For smaller solar systems, for example, operations and maintenance will generally take zero to five hours per month. Requiring monthly reporting would, accordingly, potentially double or more the O&M required for these facilities, not to mention all of the other burdens the IOU PPA seeks to impose on small developers.

The PD also states (p. 48): "... an IOU may request a report less than once per month (e.g., quarterly, semi-annually, or annually), which means there may be even less of a burden on sellers." In our experience with the IOUs, in literally every circumstance where IOU discretion is allowed, or where a tariff is silent on the specific issue, the IOUs choose the most restrictive or burdensome interpretation of contract or tariff language. Accordingly, it is not sufficient that the IOU "may" require reporting on less than a monthly basis, because they will surely require the greatest burden that they can under the tariff. We again urge the Commission to allow no more than quarterly reporting.

**v. Insurance requirements should be reduced**

The PD states (p. 51): "We are committed to streamlining and reducing the overall costs related to the FiT contracting process but find this area sufficiently important to justify the imposition of the proposed insurance provision." However, the burden is on the IOUs to demonstrate why the highly onerous insurance requirements are necessary – the burden is not on parties to demonstrate why the suggested requirements are overly burdensome. Again, the Commission expressly directed the IOUs to use the PG&E E-SRG PPA as the basis for the ReMAT PPA and the IOUs have not explained why these additional insurance requirements are necessary for ReMAT projects and were not necessary for AB 1969 contracts.

**vi. COD deadline extensions should be expanded when delays are outside the control of the developer**

The PD denied the Clean Coalition's recommended COD extension provisions, stating that we provided no new information on this issue (p. 28). However, we suggest at this time new information consisting of recent experience with SCE's CREST Program, where interconnection delays are putting a number of executed PPAs at risk. The PD is also mistaken in stating that we advocated for a longer COD deadline. Rather, we have advocated for a shorter COD (18 months vs. 24 months), but allowing for unlimited extensions for issues outside the control of the developer, such as interconnection delays.

A related point is the manner in which IOUs must grant an extension. Currently, we have heard from some developers that the IOUs are granting extensions only on a day-to-day basis. We recommend that extensions be granted for the full extension period, rather than day-to-day. If extensions are for items outside of the control of the seller, back-to-back six-month extensions should be granted until the source of the delay is resolved.

**vii. A price floor should be added**

The PD did not adopt a price floor, as we have recommended, stating that the proposed program (p. 26) "already incorporates several mechanisms to guard against unreasonably low pricing." However, it is not clear what these mechanisms are and we urge the Commission to clarify this issue further. This is a significant issue, due to concerns about the "race to unviability" that the Clean Coalition has warned of previously. We feel that it is improper for the Commission to deny a party's recommendation without clear explanation that would allow parties to determine whether the alleged mechanisms are sufficient to guard against unreasonably low pricing.

**viii. Collateral requirements should end upon COD**

There is no need Collateral Requirements after COD (p. 39). Contrary to what the PD states, ratepayers are not at risk because if SB 32 projects don't deliver power they won't be compensated. Again, the burden of proof is on the IOU to demonstrate why changes to the base PPA are necessary. SCE's Advice Letter 2877-E (top of page 5) describes its process under its WATER FIT contract for returning development deposit (collateral) to developers once the project is online. No IOU has presented evidence that there has been any actual problem from projects ceasing to deliver after COD, weighing heavily against the post-COD collateral requirement.

**ix. Assignment should be under the Commission's discretion rather than the IOU**

With respect to assignment of the PPA, we strongly object to the PD's decision to provide discretionary permission to the IOUs (p. 57). In our experience, in every circumstance that IOUs are granted discretion they will choose the most restrictive possible option, which may lead to many disputes regarding assignment. We recommend instead that the PPA allow assignment, as the default position, as long as the assignee, in the best judgment of the assignor, meets the required criteria. If an IOU objects to such assignment it must file an advice letter to lodge its objection and allow the Commission to rule on the objection.

**x. Invoicing should be more than quarterly**

We did not protest the issue of monthly invoices in order to allow a longer billing period, as the PD incorrectly states (p. 40). Our point, rather, was that developers should not be required to issue invoices at all. IOUs should simply pay on the metered quantity. This is how billing works in net metering and there is no compelling reason why it should be different for wholesale projects. The IOUs have not demonstrated, with evidence, why they seek to change this requirement.

**xi. The Commission should harmonize Qualified Reporting Entity requirements at this time**

With respect to the Qualified Reporting Entity issue (p. 41), we urge the Commission to accept that this is the time at which the “paradigm” discussed should change. The IOUs should be acting as the QRE in a consistent manner. Again, this is a provision that harms smaller developers.

**xii. CEC-related compliance issues should be capped at \$25,000 for the life of the project**

There appears to be an error and a misunderstanding in the PD’s treatment of compliance expenditures for CEC-related obligations (pp. 43-44). The PD states: “Under this term, amounts exceeding \$25,000 are the seller’s costs.” This should be “buyer’s costs.” Also, it is not clear if the Commission recognizes that the \$25,000 cap that the IOUs recommend is for annual expenditures, not an aggregate cap for the life of the contract. As an annual expenditure, the Clean Coalition reiterates that this is a very high potential cost for projects that may be significantly smaller than 3 MW.

## 5. Other issues

### **i. The Clean Coalition supports deferring amendments required by SB 1122 until a later decision**

The PD (p. 3) states: “This decision does not address the recently effective amendments to § 399.20, enacted by SB 1122 (Rubio, Stats. 2012, ch. 612). The Commission will address SB 1122 and modify the FiT program consistent with the recently effective legislation in a subsequent decision.” The Clean Coalition agrees that deferring implementation of SB 1122 until a later date is warranted.

### **ii. We agree that the advice letter process is sufficient for re-classification of FIT contracts**

Last, the Clean Coalition agrees with the Alternate Decision that any change to SB 32 program capacity should be achieved through an advice letter process and a Commission decision is not required.

## 6. Errata

- P. 16 of the PD states that it eliminates “a separate Second Program Phase.” However, there is no mention after this brief point of such elimination. The Clean Coalition supports this elimination and urges the Commission to clarify this brief mention on p. 16.
- The PD should change its discussion of the “CALSEIA and Clean Coalition petition for modification” to the “Clean Coalition and CALSEIA petition for modification” because this is the name of the document filed on Nov. 13 and because the Clean Coalition was the lead author of this document. Footnote 20 correctly states the name of the document but then reverses the name order in describing it, as the PD does more generally.
- “Willing” in the second to last paragraph on p. 13 should be “willingness”
- The first sentence of the last paragraph on p. 16 seems to be garbled
- “D.11-11-12” at the top of p. 18 should be “D.11-11-012.”
- The statement on page 28 “The petition for modification by CALSEIA and

Clean Coalition is denied” is incorrect. The PD accepts some recommendations from our PFM and rejects others, so the statement should be modified.

- Footnote 95 seems to be a mistake since the text refers to IOU comments
- Footnote 165 cites the Clean Coalition’s reply comments on the third redlined PPA, but the footnote is meant to cite Henwood comments

## **7. Conclusion**

The Clean Coalition appreciates the chance to provide these comments and we urge the Commission to adopt our recommendations herein.

Respectfully submitted,

TAM HUNT

A handwritten signature in black ink, appearing to read 'TH', with a long horizontal flourish extending to the right.

April 8, 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 8<sup>th</sup> day of April, 2013, at Santa Barbara, California.

Tam Hunt

A handwritten signature in black ink, appearing to be 'TH' followed by a long horizontal stroke.

Clean Coalition