CLEAN COALITION INFORMAL REPLY COMMENTS ON STAFF CONCEPT PAPER FOR AN EXPEDITED INTERCONNECTION DISPUTE RESOLUTION PROCESS

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RE: Clean Coalition Informal Reply Comments on Staff Concept Paper for an Expedited Interconnection Dispute Resolution Process

I. INTRODUCTION

In response to the May 30th 2017 email request from Energy Division Staff requesting informal comments regarding the *Staff Concept Paper for an Expedited Interconnection Dispute Resolution Process* and in response to the opening comments of stakeholders, the Clean Coalition submits these informal reply comments.

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise. The Clean Coalition drives policy innovation to remove barriers to procurement and interconnection of distributed energy resources ("DER")—such as local renewables, advanced inverters, demand response, and energy storage—and we establish market mechanisms that realize the full potential of integrating these solutions. The Clean Coalition also collaborates with utilities and municipalities to create near-term deployment opportunities that prove the technical and financial viability of local renewables and other DER.

II. COMMENTS

A limited number of opening comments were submitted by stakeholders, and upon review the Clean Coalition broadly supports the thoughtful individual recommendations by each party suggesting clarifications and refinements in the proposed dispute resolution process.

The Joint Utilities provided the most detailed comments with arguably the most far-reaching implications. We appreciate the issues raised in these comments and offer the following brief reply.

Section 769.5(a): Limiting Eligibility After Interconnection Agreement.

Joint Utilities state: "Per Section 769.5(a) and 769.5(b)(8), the scope of EDP [Expedited Dispute Process]-eligible disputes must be limited to disputes that concern compliance with identifiable, established interconnection rules that arise while an interconnection customer's Interconnection Request application is being processed. EDP-eligibility should end once the Interconnection Request application has been processed and is supplanted by an executed interconnection agreement."[1]

We acknowledge that 769.5(a) does refer to "disputes over interconnection applications", and not to Interconnection Agreements entered into by parties at the conclusion of the application process. However, while the code does authorize the specific expedited resolution process in relation to applications, it does not explicitly prohibit use of this process for interconnection disputes associated with compliance with the Interconnection Agreements. While we do not offer a legal opinion, it may reasonably be understood that Interconnection Agreements arise out of the applications from which they originated. As such, disputes over an interconnection application might be considered to encompass all activities associated with that application, including subsequent agreements and work planned or performed. Other parties comments reflect similar positions.

Interconnection Agreements establish firm equipment requirements, however significant uncertainty remains unless the project is participating in the Pilot Program for the Cost Envelope Option.[2] There is potential for disputes to arise during the construction and certification phase, especially if unforeseen circumstances impact the planned work or project equipment. If these issues cannot be resolved through the informal process, and alternative to the ADR process is warranted, and utilization of the Panel would be appropriate where such disputes are technical rather than legal in substance. In reviewing the Dispute Notice and Application, a determination

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[1] Joint Utility comments at 1 and 7

[2] D.16-06-052

may be made as to whether the type of dispute is appropriate for the Panel, thereby allowing expedited resolution.

Section 769.5(b)(3): Informal Dispute Resolution Requirements and Schedule

The Joint IOUs note that Section 769.5(b)(3) requires parties to have first engaged in informal dispute resolution prior to being eligible for the formal expedited process, and recommend that Rule 21's existing Section K.2.a should serve as the informal dispute resolution process.

Clean Coalition is sympathetic to the concerns raised here, and note that K.2.a provides a dispute resolution process with a similar timeline to the new PUC Sec 769.5. As such, 769.5 may be intended to replace the lengthy ADR or external mediation process, not the 45 day K.2.a process. However, the important differences between K.2.a and 769.5 are a) K.2.a does not ensure resolution of the dispute, and b) does not utilize independent experts. The 769.5 process might therefore be seen as adding certainty and impartiality to the existing expedited process.

As we previously noted, parties engaging in good faith and informal processes are frequently able to resolve issues efficiently, and we do not want to discourage or replace this opportunity. SCE notes that 90 issues brought to their interconnection Ombudsman have been "successfully addressed", and only one of the 16 times parties have utilized K.2.a has the dispute has been referred to ADR. These figures suggest some success but the outcomes are distinctly inconclusive since the delays associated with the ADR option strongly discourage its use.

We therefore **support** the use of K.2.a as proposed by the Joint Utilities as an eligibility requirement prior to a party bringing a dispute before the 769.5 Panel. This will also mean that parties have had ample opportunity to refine the issues and gather together the information required by the Panel.

However, because new understanding may well arise through the initial dispute process, we **oppose** the Joint IOU recommendation that the 769.5 Panel application "must limit its scope to issues identified when the party initiated the informal dispute resolution process".[3] The informal process permits Parties time to understand their disputed issues, which in turn permits them the opportunity to resolve issues and/or crystalize the remaining areas of dispute. Through

[3] Joint IOU opening comments at 4.

this process, issues may be redefined and new issues may arise beyond those initially identified. The informal process offers some opportunity to both identify and address these issues during party conferences without initiating a new K.2.a request and starting a new 45 day timeline. We propose instead that the application to the Panel limit its scope to "issues identified by parties in the informal dispute resolution process". Applicants will have natural incentive to address any new issues arising during that informal process, with additional meetings as warranted, rather than adding at least 60 days more to refer the process to the Panel.

This will likely reduce the number of disputes submitted to the Panel and reduce the number of issues contested in a dispute, thus promoting efficient dispute resolution while conserving the CPUC's and the subpanel's limited resources.

Sec 769.5(b)(8): Scope of eligible disputes – Rules versus Methods.

Fundamentally there are two classes of dispute – engineering and compliance. Engineering disputes address the accuracy of analysis performed in studies and engineering conclusions. Compliance disputes address factual performance and interpretation of rules such as established in tariffs and contracts. The former is the purview of engineers, the later of legal and regulatory experts.

As noted in our opening comments and those of the Joint Utilities, the proposed dispute resolution process may be severely limited because the scope of the Panel's review appears to be restricted to issues regarding compliance.[4] This would appear to restrict the Panel to determining only whether the utility actions and requirements are allowable, i.e. not in conflict with the tariff. Most disputes are likely to center not on whether utility actions are in violation of the tariff, but whether they are reasonable, cost efficient and necessarily required under the tariff to ensure safe and reliable interconnection.

The interconnection rules as established in the tariff define thresholds, timelines, and responsibilities that are rarely in dispute, while often deferring the interpretation of study results and mitigation to engineering judgment. When disputes do arise, they are most frequently regarding whether a costly utility requirement is necessary or whether the applicant's alternative

[4] Sec 769.5. (b) (8) "The scope of the review panel's review shall be limited to issues regarding compliance with the established interconnection rules"

is sufficient to meet the engineering safety and reliability standards and utility operational requirement while assigning appropriate cost responsibility. Addressing these disputes would be useful and appropriate for the expertise envisioned of members the technical panel called for in the legislation and Sec 769.5(b)(1), and both the Commission and Joint Utilities call for licensed Professional Engineers with technical expertise in distribution interconnections.

The proposed Dispute Resolution Panel holds out great potential to address such disputes, but appears to be restricted by statute from doing so in a manner which appears to contradict the required technical composition of the panel and the goals of many supporters. The Commission should clarify whether it has the authority to utilize the recommendations of the Panel to address technical disputes relating to reasonableness and engineering necessity.

Sec 769.5(b)(8): Scope of eligible disputes – Cost Reasonableness

While questions regarding reasonableness of costs are very important to address, and we strongly encourage the Commission to do so, this panel is neither staffed to address these questions, nor is it the appropriate venue. Both those costs associated with agreed upon engineering work and other interconnection related costs such as maintenance and replace charges should be addressed in formal proceedings.

Section 769.5(b)(6): Interested Persons

The Joint IOUs recommend limiting the definition of "interested person" and restricting the opportunity to submit comments to parties who have first shown a demonstrable interest in the dispute.[5] The Clean Coalition opposes this recommendation. Engagement in proceedings and development of comments is a significant effort and is not undertaken lightly or without substantial motivation. As such, the development and submission of comments in a dispute may well be considered in of itself a demonstration and showing of interest. It is hypothetically possible that illegitimate or nuisance filings may occur, but inhibiting participation by creating additional and vague requirements and barriers to participation is a costly solution to a problem that has not been demonstrated to exist. We recommend deferring action on this matter – the Commission can address the issue if and when it is shown to warrant action.

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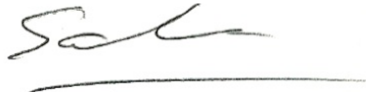
[5] Joint IOU comments at 10

III. CONCLUSION

The Clean Coalition appreciates the Commission staff's very worthwhile efforts in developing the Concept Paper and soliciting stakeholder comment. We look forward to working with the Commission and interested parties to implement the Expedited Dispute Resolution process.

Respectfully submitted,



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