Southern California Edison
CREST Reform

Clean Coalition comments on Proposed CREST PPA

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I. Introduction

The Clean Coalition is a California-based policy organization, part of Natural Capitalism Solutions, a non-profit entity based in Colorado. The Clean Coalition focuses on policies that can deliver cost-effective and timely clean energy to the market, including within the underserved "wholesale distributed generation" (WDG) market segment, which is comprised of wholesale generation projects interconnected to the distribution grid. WDG is a particular focus given the combination of cost-effective energy and economic benefits that it delivers, while at the same time avoiding all of the challenges associated with transmission build-outs. The Clean Coalition is active in proceedings at the California Public Utilities Commission, California Air Resources Board, California Energy Commission, the California Legislature, US Congress, the Federal Energy Regulatory Commission, and in various local governments around California.

This document contains the Clean Coalition's comments on SCE's proposed Power Purchase and Sale Agreement ("PPA") posted on SCE's website on June 8, 2011. Our main comments are as follows:

- The Clean Coalition urges SCE and the CPUC to approve any changes to CREST in the short-term that will improve the CREST program and are not otherwise forbidden by SB 32. Some issues we raise below will likely require discussion and resolution in R.11-05-005 rather than through this current CREST reform process conducted by SCE. We urge SCE, however, to complete the new CREST PPA quickly and where this are strong objections from parties on certain contractual components to simply remove those components in the interest of completing a functional and improved PPA in a reasonable timeframe.
- The Clean Coalition strongly objects to requiring Full Capacity Deliverability status for CREST projects. As we have described in comments to the CPUC on the RAM advice letters, there is no statutory requirement for Full Capacity Deliverability in the CREST program or any other renewable energy procurement program; deliverability should be a Producer <u>choice</u>, not a mandate from SCE.
- Section 19, "reservation of rights," must be removed or amended to clarify that once a PPA is completed with a developer/Producer that the contract terms, including price, will be honored.

- Specific telemetry equipment should not be required because this can be quite expensive for smaller projects; rather, SCE should specify the data requirements and allow developers to meet these requirements as they choose.
- COD requirements should be triggered from the time a Producer's Interconnection Agreement is completed, not from the Effective Date of the agreement.
- A dispute resolution procedure other than arbitration should be included in the PPA, with Commission involvement; allowing only arbitration for dispute resolution can be costly and may work to prevent amicable resolutions for problems that arise.

II. Discussion

The Clean Coalition appreciates this chance to comment on SCE's proposed CREST reforms. We are currently involved in R.11-05-005's implementation of SB 32, which modifies the AB 1969 CREST program, as well as other utilities' AB 1969 programs. The existence of SB 32 raises some tricky questions as to what CREST reforms are legally allowed prior to completion of the CPUC proceeding. Some issues we raise below will likely require discussion and resolution in R.11-05-005 rather than through this current CREST reform process conducted by SCE.

We urge SCE and the CPUC, however, to complete changes to CREST in the short-term that will improve the CREST program and are not otherwise forbidden by SB 32 or AB 1969. These changes will necessarily be temporary due to R.11-05-005's implementation of SB 32 in 2011. Due to the uncertainty regarding the timeframe for complete SB 32 implementation, however, we fully support improving the CREST PPA in the short-term, with the caveats just listed.

We have highlighted additional questions, problems and potential problems in each section of the proposed PPA below.

Section 2.5

Is "net power rating" AC or DC? The Clean Coalition recommends AC.

Section 2.9

This section raises an important question: if SCE is obligated to act as the Scheduling Coordinator, and there is an (apparent) risk that SCE may not be authorized as the Scheduling Coordinator, despite taking "all necessary steps," what happens if SCE is not authorized as the Scheduling Coordinator? This should be clarified in the PPA.

Section 3.1

This section states in a note: "*[SCE Note: This option cannot be chosen if another Generating Facility that is not eligible for service under Schedule Crest exists at the same Premises.]"*

Why is this the case? There is no statutory prohibition against, for example, a CSI project on the same site, or even the same meter, as a CREST project.

Section 3.2

The definition of Effective Date should be clarified. As the starting point for all other dates in this agreement, it is highly important and the definitions section refers back to the Preamble. The Preamble does not, however, establish whether CPUC approval of the PPA is required for the Effective Date to be triggered. SCE should clarify whether the Effective Date is triggered upon consent by Producer and SCE to the PPA or by CPUC approval of the contract. The Clean Coalition recommends the latter definition.

Additionally, why must the Term Start Date be at least 30 days after the Effective Date?

It is not clear how the Producer can choose a Term Start Date without knowing when SCE will actually complete the interconnection work (under the IFFOA).

More generally, this PPA doesn't refer to the IFFOA at all, which is of concern to the Clean Coalition because SCE has previously required signing of the IFFOA before or concurrently with the PPA.

Section 3.3

The proposed PPA requires the Term Start Date to commence within 18 months of the Effective Date. SCE should clarify whether this means that a project must be online ("COD") within 18 months of the Effective Date. As written, there is nothing to prevent the PPA from commencing 18 months after the Effective Date even if the project is not

completed and no power sales occur. We assume that the intent of this language is to require project completion and the commencement of sales within 18 months of the Effective Date, but this section needs clarification.

Regardless of the intent of this section, the Clean Coalition recommends a different COD formula. Due to the extreme uncertainty surrounding interconnection of all renewable energy projects in California at this time, particularly under Rule 21, we strongly recommend that any COD requirements be triggered only after interconnection studies and the Interconnection Agreement have been completed. More specifically, we recommend that developers be allowed 12 months after the completion of the Interconnection Agreement with SCE for COD, with one six-month extension allowed if the Producer can demonstrate that forces outside of its control prevented it from meeting the 12-month deadline.

Force Majeure exceptions already contained in the PPA should still apply.

"Of" in the last clause of section 3.3 should be "from."

Section 3.4

Requiring monthly updates by Producer with respect to project progress seems excessive. The Clean Coalition recommends requiring an update once every three months.

Section 3.5

Does SCE have legal or regulatory authority to require reporting on minority and women employees by Producers?

Section 4.1

The "any notice" termination right in 4.1.1 seems overly broad

Also, leaving the notice time frame solely in SCE's hands seems like it is a writ to terminate.

Section 4.1.2

Similar to section 3.3, the Clean Coalition recommends that one six-month extension be permitted.

Section 4.1.4

4.1.4 is overly ambiguous (i.e. "equipment or devices necessary" – what if it is SCE's responsibility to install components of those devices?)

Section 4.2

The cure period should be extended to 30 business days after notice.

Section 4.2.3

Five days for cure is far too short. The Clean Coalition recommends at least 15 days.

Rather than immediately go to termination of the PPA, there should be an intermediary remedy (i.e. interest) that precedes any termination. If the only remedy is termination, this may not be credible (i.e. if SCE owes the developer money, but it is not economical to terminate, then the termination right is not very useful).

Section 4.2.4

This section should be removed because there is no reason why the Producer's bankruptcy should allow SCE to terminate the contract.

Section 5.1

The Clean Coalition strongly objects to requiring Full Capacity Deliverability status. As we have described in comments to the CPUC on the RAM advice letters, there is no statutory requirement for Full Capacity Deliverability and this should be a Producer choice, not a mandate. Requiring Full Capacity Deliverability will delay project eligibility for up to two years because of the extremely lengthy cluster study process under WDAT. This is not acceptable given California's need to develop renewable energy in the short-term.

This requirement alone essentially requires all CREST projects to go through the cluster process, something that would likely kill the feasibility of any CREST project, which are too small to absorb that time and cost of a full cluster study interconnection process.

Section 5.10

Producer should have to agree to SCE including the facility in PIRP/EIRP – it should not be solely an SCE decision.

Moreover, the PPA not state who will pay for PIRP's costs. If it is an election by SCE, SCE should pay for the costs; if not, the Producer should have some means to recover those costs or those costs should be represented in the CREST energy price.

PIRP also requires that projects be at least 1MW. What about projects less than 1 MW?

Section 5.11

Rather than requiring a Telemetering System, SCE should state what its data requirements are and allow the Producer to meet those requirements in its preferred manner. Telemetry costs can be quite high and substantially impact project economics. Accordingly, allowing the Producer to meet SCE's data requirements rather than requiring a particular type of technology will allow Producer to reduce costs.

Section 5.13.4

This audit right should be limited to no more than two times in any six month period. As is, it is essentially an unlimited audit right and is not warranted given the scale of the CREST program and the scale of each project.

Section 5.14

One business day's notice is far too short. This should be at least five business days.

Section 6.1

What if the readings from the CAISO meter and Check Meter differ?

Section 6.2

6.2 refers to Appendix "D" for TOU periods. Appendix "D" refers to "Los Angeles time." Does that term require further definition to resolve any possible issues regarding Standard vs. Daylight Savings time or may parties safely assume that whatever time it is in Los Angeles will be the controlling time with respect to TOU periods?

Section 6.5

This "set-off right" for SCE should be limited only to excess-sales CREST contracts. Where the Producer sells all power to SCE this right under section 6.5 should not apply.

Section 7.1

This section should clarify that SCE may curtail upon direction from CAISO only with respect to the area in which the CREST project is located – not ANY curtailment order from CAISO.

Section 7.4

Providing SCE "sole discretion" to decide the compensation due from any OSGC Order is not warranted. Rather, the contract should set forth objective criteria for determining the amount of compensation and require that Producer agree to the amount to be compensated. Alternatively, a dispute resolution procedure should be codified in this section that relies on the Commission to resolve any dispute within a reasonable time frame.

Section 14.1

"RPS requirements" is not explained.

Section 16

A less formal dispute resolution procedure should be codified in this section, in addition to the arbitration provisions. The Clean Coalition recommends that the Commission appoint a dispute resolution officer for all feed-in tariff and other distributed generation programs, and that the outline of this alternative dispute resolution procedure be included in section 16.

We propose the following language for the alternative dispute resolution procedure in this section:

"Any disputes arising from this Agreement that cannot be resolved by the Parties themselves shall be referred to the designated representative of the California Public Utilities Commission for dispute resolution."

The phrase "or as otherwise specified in this Agreement" should be inserted after "remedies" in the first sentence of Section 16. This change accommodates any Commission dispute resolution procedures that are added, per, for example, our recommendation here or in section 7.4.

Section 17

The restraints on assignment are far too broad. The Clean Coalition feels strongly that there should be very limited restrictions on assignment. Essentially, if a purchaser can demonstrate to SCE that it meets all contractual requirements there should be no other limitations on assignment.

Section 19

Section 19 is potentially highly problematic. How could a developer enter into a PPA with the threat of price changes hovering over their head? This section must be removed or amended to clarify that once a PPA is completed with a developer/Producer that the contract terms, including price, will be honored. <u>This point cannot be stated strongly enough.</u>

General comments

The agreement requires the producer to pay within 30 days of invoice, but nowhere does the agreement state payment terms for payment due from SCE. The Clean Coalition recommends that reciprocal obligations for SCE payments be included in the PPA.

Respectfully submitted,

_____/s/_____

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