

# California Public Utilities Commission

## Energy Division

### Clean Coalition Protest of Southern California Edison Advice Letter 2870-E

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## Clean Coalition Protest of SCE AL 2870-E

The Clean Coalition respectfully submits this protest of SCE's Advice Letter 2870-E, *Contracts from Southern California Edison Company's ("SCE's") California Renewable Energy Small Tariff ("CREST") Program*.

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.

Our main points are as follows:

- We support SCE's request that the Commission approve the 75 CREST contracts, under either of the following rationales: 1) the Commission approves the contracts as bilateral contracts but does so with the express understanding that by doing so SCE's remaining AB 1969 WATER allocation (~123.8 MW) will be available for the new ReMAT program or 2) the Commission concludes that such approval is unnecessary because SB 380 removed any distinction between the CREST and WATER allocations

- Re rationale 1) the Clean Coalition remains very concerned about the viability of the ReMAT program and allocating SCE's full WATER program capacity to ReMAT would allow SCE to start ReMAT implementation with a significant capacity, rather than the zero megawatts that they will otherwise start with. Rationale 1 also allows the Commission to consistently require PG&E, in response to its motion for clarification re its AB 1969 program, to open up its AB 1969 E-SRG allocation to any type of developer, as required by SB 380
- Re rationale 2) we argue that no Commission approval is necessary for the 75 PPAs due to SB 380's elimination of a distinction between types of applicants, and because, according to SCE's own statements, it has implemented its AB 1969 program as a single program, with no distinction between water/wastewater and other applicants. As such, it would constitute a serious breach of program to subject CREST applicants to the uncertainty and delays of Commission approval unless there is a substantial benefit, such as freeing up capacity for ReMAT that would otherwise be unavailable, as in rationale 1)
- Under either rationale, we also request that the Commission require SCE to re-open its CREST program until SCE's full 247.7 MW obligation is exhausted, or the new SB 32 tariffs are approved by the Commission, whichever is earlier

## **I. Discussion**

The Clean Coalition is, in this protest, seeking a path between the unattractive alternatives of subjecting developers to unnecessary uncertainty – and what can be described as potential “breach of program” due to this uncertainty – and the desire to see a non-negligible MW capacity to begin the new SB 32 feed-in tariff. The current AB 1969 feed-in tariff has been modified by SB 380, discussed below, and SB 32, which increased the allowed capacity per project from 1.5 MW to 3 MW. SB 32's ReMAT price mechanism was approved in D.12-05-035 and a proposed decision is pending before the

Commission that would approve the required PPAs and tariffs to begin the new SB 32 program later this year. However, as the Clean Coalition has pointed out in various rounds of comments, there is likely to be very limited capacity in the new program when it begins. In particular, it is likely that SCE will have zero MW in its program when it begins because all capacity should be exhausted through its current AB 1969 program.

Another moving part in this complex situation is PG&E's April 5, 2013, motion to the Commission requesting that the Commission not require PG&E to open up its remaining AB 1969 capacity to all types of developers, rather than only water/wastewater agencies per the original eligibility under AB 1969. SB 380 eliminated this distinction, however, and it appears that the Commission should have required the utilities to remove this distinction pursuant to SB 380, but has not yet done so. It should now take the opportunity to require the utilities to remove this distinction.

The best solution, from the Clean Coalition's perspective, is to approve the 75 PPAs that SCE seeks to have approved, as bilateral contracts outside of AB 1969 or SB 32, but to also require PG&E to open up its AB 1969 allocation to any type of developer, in a ruling on PG&E's motion. Through this solution, which is rationale 1) below, the sellers under the 75 CREST PPAs obtain approved PPAs, as bilateral contracts, and ratepayers benefit from having additional capacity made available for DG projects under both AB 1969 and SB 32 feed-in tariff programs – with all the attendant climate, air pollution, and job creation benefits that this entails.

However, due to the uncertainty regarding the willingness of the Commission to approve the 75 PPAs as bilateral contracts, we offer below a second rationale that achieves some of the benefits that we seek.

**a. The Clean Coalition supports approval of the 75 CREST PPAs**

AL 2870-E states (p. 7):

SB 380 was enacted to expand the statewide cap to 500 MW for all customers under the PU Code Section 399.20 tariff. SCE's procurement of the CREST Contracts in 2012-2013 was therefore consistent with the existing statutory requirements, even though D.07-07-027 had previously allocated a non-water/wastewater-specific cap to SCE. As the CREST Contracts were procured above that cap, this Advice Letter filing conforms to D.07-07-027's requirement to submit additional projects for Commission review and approval via the advice letter process.

The Clean Coalition fully supports the approval of the 75 CREST contracts, under either of the following two rationales: 1) the Commission does so with the express understanding that by doing so SCE's full WATER AB 1969 allocation will be available for the new ReMAT program, and at the same time recognizes that SB 380 eliminated any distinction between types of developers; or 2) the Commission states that such approval is unnecessary because SB 380 removed any distinction between CREST and WATER allocations.

**b. The Commission should approve the 75 PPAs with the express understanding that SCE's WATER allocation will shift to ReMAT**

The Clean Coalition remains concerned about the viability of the ReMAT program because of the very limited capacity that will be available, which is one of many problems that we have highlighted in various rounds of comments. However, allocating SCE's full WATER program capacity (~123.8 MW) to ReMAT would allow SCE to start ReMAT implementation with significant capacity, rather than the zero megawatts that they will otherwise start with.

It is not clear from SCE's advice letter if they are suggesting this outcome, but it is not precluded by SCE's reasoning. The Commission should approve the 75 PPAs as

bilateral contracts, for the reasons that SCE cites regarding the benefits of these projects. As such, these 75 PPAs would have no impact on SCE's AB 1969 allocation of 247.7 MW, leaving ~123.8 MW to roll into the ReMAT program. The Commission should also require the utilities to eliminate any distinction between types of developers due to the impact of SB 380, as discussed further below.

**c. The Commission should require the utilities to eliminate any distinction between types of developers in their AB 1969 programs**

In the alternative, if the Commission is unwilling to approve the 75 MW as bilateral contracts, the Clean Coalition recommends that the Commission instead find that PPA approval is not necessary due to SB 380's elimination of any distinction between types of developers under the existing feed-in tariff program.

SCE has run a single AB 1969 program since early 2010, with no distinctions made between water/wastewater agencies and other developers. SB 380 also eliminated any distinctions between types of developers. SB 380 states in relevant part (P.U. Code section 399.29(e)), eliminating the limitation in AB 1969 to only water/wastewater agencies: "Each electrical corporation shall only be required to offer service or contracts under this section until that electrical corporation meets its proportionate share of the 500 megawatts based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations." Accordingly, the programmatic distinction and caps imposed by D.07-07-027 are not relevant and are contrary to the more recent law under SB 380.

SCE's Advice Letter states (p. 4, emphasis added): "Although Schedule CREST maintains the non-water/wastewater-specific cap of 123.8 MW, SCE offered all 247.7 MW of its proportionate share of the PU Code Section 399.20 statewide limit under one

program -- Schedule CREST and its associated pro forma contracts.”<sup>1</sup> To now argue, as SCE is doing, that the 75 CREST PPAs require Commission approval, contravenes SB 380 and SCE’s own practice, as reflected in the statement just quoted.

If SCE “offered all 247.7 MW” of its allocation “under one program” (SCE AL 2870-E, p. 4) it should not also claim that it has reached the cap for the non-water/wastewater specific cap of 123.8 MW, requiring approval of any PPAs signed after this cap is reached. This is the case because the purpose of the FIT program, and SCE’s CREST program as a component of the state-wide FIT program, was to provide developers pre-approved and non-negotiable PPAs, as a streamlined way to obtain a PPA. SCE’s interpretation of the relevant history is inaccurate because, as SCE itself writes, its “proportionate obligation” under SB 380 and AB 1969 is for 247.7 MW. It has not, by its own account, met this limit. To now subject these 75 PPAs to the uncertainty of Commission approval contradicts the relevant statutory guidance and broader policy concerns about programmatic integrity, market signals, and trust in regulatory agencies.

In other words: if SCE previously eliminated the distinction between water/wastewater and non-water/wastewater components of its AB 1969 program, as it has in practice, it shouldn’t now claim that there is a distinction and that any contracts SCE has signed above the erstwhile CREST cap are subject to Commission approval. In addition to constituting non-compliance with SB 380, it would constitute a breach of program to subject developers to the uncertainty of seeking Commission approval for PPAs in a program that was explicitly designed to avoid the need for Commission approval – unless there is a countervailing benefit, as discussed above in rationale 1).

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<sup>1</sup> SCE formerly included on its website a running tally of the MWs remaining in its AB 1969 program, until sometime in March. This running tally made no distinction between CREST and WATER tariffs, again strongly supporting the notion that SCE was holding open the program to all types of developers, not just water/wastewater agencies. Moreover, SCE does not even have a website for WATER projects, strongly supporting the conclusion that SCE combined the CREST and WATER contracts into one program.

Because SB 380 made no distinction between types of applicants,<sup>2</sup> it seems that the Commission was remiss in not previously revising its guidance in D.07-07-027 with respect to distinctions between types of applicants. SCE made this change itself, in practice but not in its tariff, as is described in its advice letter filing, and we are now left with the present complex and somewhat confusing situation. The Commission should at this time issue a resolution on AL 2870-E that remedies its previous oversight in a way that respects the integrity of the CREST program and SB 380's elimination of any distinction between types of developers.

**d. The Commission should require that SCE re-open its CREST program**

Even if the Commission approves the 75 CREST contracts that SCE seeks to have approved, SCE will not have met its 247.7 MW obligation. 123.8 MW plus 105.53 MW (the total for the 75 CREST PPAs that SCE seeks to have approved) is 229.33 – leaving 18.37 MW remaining in SCE's CREST program.

Accordingly, the Commission should require that SCE re-open its CREST program and complete PPAs for the remaining 18.37 MW of its 247.7 MW obligation. SCE must keep its CREST program open until the Commission approves the new ReMAT tariff<sup>3</sup> and, with interest still strong in the CREST program, it seems clear that SCE should be able to easily fill the remaining 18.37 MW before the Commission approves the ReMAT tariffs.

SCE argues (p. 7): “Approving these contracts would ensure a stable market and respects the integrity of the executed contracts.” The Clean Coalition agrees entirely with this statement and we urge the Commission to respect the integrity of the AB 1969

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<sup>2</sup> The Commission expanded the allocation under the FIT program in response to SB 380, in an Administrative Law Judge's ruling from Nov. 18, 2008, but did not require that the utilities remove the distinction between types of developers that SB 380 eliminated.

<sup>3</sup> ALJ ruling from July 10, 2012.



program by requiring SCE to offer the remaining AB 1969 MW obligation to developers.

Last, ALJ DeAngelis was very clear in her ruling from July 10, 2012, that “the existing Public Utilities Code Section 399.20 Feed-In Tariff Programs implemented under Assembly Bill 1969 will remain effective until replaced by the new tariffs.” The SB 32 tariffs have not been approved, thus the existing section 399.20 FIT program (CREST for SCE) remains in force until the Commission approves the new tariffs.

## **II. Conclusion**

In summary, the Clean Coalition urges the Commission to either 1) approve the 75 CREST PPAs as bilateral contracts with no impact on SCE’s AB 1969 capacity, and also find that SB 380 eliminate any distinctions between types of developers; or 2) find that such approval is not necessary due to SB 380’s elimination of any distinctions between types of developers. The Commission should also require SCE to re-open its CREST program until the full 247.7 MW are subscribed or the new SB 32 tariffs are approved, whichever is earlier.

Respectfully submitted,

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