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 IEPA APPLICATION FOR
REHEARING OF D.12-11-016

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December 31, 2012

CLEAN COALITION COMMENTS ON IEPA APPLICATION FOR REHEARING OF D.12-11-016

The Clean Coalition respectfully submits these comments on the Independent Energy Producers Association (IEPA) Application for Rehearing of D.12-11-016.

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.

A summary of our comments follows:

- The Clean Coalition is traditionally focused on Wholesale Distributed Generation (WDG) rather than larger RPS projects, which are the focus of the Application for Rehearing (AFR). However, because of the utilities' tendency to attempt to adopt contractual changes from one procurement program into other procurement programs, we are intervening at this time in support of IEPA's AFR

- The Clean Coalition supports the principle of limiting ratepayer exposure to network upgrade costs and keeping rates as low as possible while meeting other policy goals
- However, we agree with IEPA that the termination rights language included in D.12-11-016 will lead to asymmetrical and unfair outcomes once implemented by the IOUs
- We agree with IEPA that the termination right should be eliminated because at this time no evidence has been presented that excessive network upgrade costs are a real problem with the RPS program; all network upgrade cost risk is imposed on developers; there is no explanation of why the termination right was eliminated in the RAM context but preserved in the RPS context; and because of our fear that the utilities will attempt to impose this new termination right on WDG procurement programs.
- If the Commission declines to eliminate the termination right (the Commission did eliminate the proposed termination right in the RAM program, due in part to the Clean Coalition's intervention) it should at least require that the termination right expire automatically after 30 days from the date the IA is signed by both parties
- Moreover, if the Commission declines to eliminate the termination right, the seller should have 60 days to remedy excess network upgrade costs through meetings with the PTO, correcting any errors, etc. The utility should then have 30 days to review the suggested remedies before being allowed to exercise its termination right. This would require that the utility not be able to exercise its termination right until 90 days has expired from the time seller is notified of excessive network upgrade costs, and not until after the meet and confer process has had time to be completed

I. Discussion

A. The Clean Coalition agrees fully with IEPA's concerns that the termination right is unfair and asymmetric

D.12-11-016 (the "Decision") states (p. 31): "In this decision we accept the use of new terms in SCE's and SDG&E's pro forma agreement to allow for contract termination based on transmission upgrade costs." The Decision also states (p. 32):

> Bids are selected and contracts are executed based on their value relative to other offers and opportunities. Transmission costs are an integral part of that valuation. As SCE and SDG&E state, the value of the contract to the ratepayer changes if the transmission upgrade costs exceed caps. SCE's proposal to buy-down the transmission costs that exceed the cap essentially allows the total value of the contract to the ratepayer to remain consistent with the value of the bid and executed contract by placing responsibility for the costs above the cap on the seller. Because this proposal keeps the total expected ratepayer's costs unchanged, we find it reasonable and apply it to PG&E as well.

We understand the motivation behind the Commission's reasoning but we note that injecting this additional and substantial uncertainty into the RPS process will in fact not keep the "total expected ratepayer's costs unchanged" because developers, if this termination right is preserved, will have to plan for the possibility that their major expenditures of money and time will be entirely mooted by this termination right. This will lead to higher bids and higher PPA prices.

A recurring theme in policy debates at the Commission in recent years is the need for data/evidence to make informed policy choices – and the too-frequent lack of good data/evidence. The utilities and the Commission have failed to provide any evidence that excessive network upgrade costs have or will be a problem for any RPS projects, or that the risk of unbounded ratepayer exposure is significant. While the Commission appropriately believes that such unbounded exposure is unacceptable, the Commission has multiple goals to balance and the cost of remedies should be commensurate with the risk. As directed by the Decision, the termination right unduly burdens all RPS projects with significant new contractual uncertainty that increases risk to financing entities, resulting in higher project costs, which are ultimately born by ratepayers.[1] While the ratepayer risk the Commission is seeking to avoid is not supported by evidence, the impact of the remedy on energy costs paid by ratepayers is virtually certain.

The Decision is sketchy on the details of the termination right, and we expect additional details to come to light in the resolutions that will be filed by the IOUs, but a likely scenario is as follows: a developer learns that its projected network upgrade costs will be higher than projected, triggering the termination or buy-down right. The increase in costs makes the project uneconomic, which means that the buy-down right would not be exercised. The project is terminated. Accordingly, some RPS projects that have expended years of effort and large sums of money may see their efforts wasted <u>due to no fault of their own and due to circumstances over which they have zero control</u>. As IEPA notes, all of the risk is placed on the developer with this new termination right, but all of the control over projected network upgrade costs remains with CAISO and the IOU. This is a serious asymmetry that requires remedying.

There is also a serious discrepancy between this language in the Decision and recent determinations in the RAM program on the same issue. The Clean Coalition commented on the proposed RAM resolution and helped convince the Commission to eliminate the same proposed termination right in the RAM

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[1] If the resulting impact on RPS bids increases the offered/accepted cost of energy (the PPA rate) by just 0.1¢/kWh, ratepayers would pay an additional $46,000 over a 20-year contract for <u>each MW</u>, the equivalent of a $460,000 unanticipated cost on every 10 MW of new capacity (Assuming 2300 MWh/MW capacity per year for 20 years = 46,000 MWh).

context (our comments are appended below in Appendix A) Resolution E-4546 (Nov. 12, 2012) states (pp. 11-12):

> In comments submitted on the draft resolution, Clean Coalition, Recurrent, LSA, and SEIA stated their opposition to the inclusion of this termination right as drafted. These parties argued that there has been no showing of evidence that this termination right is necessary to solve an existing problem; that real-world upgrade costs should serve as the basis for the trigger thresholds; that the Commission should impose a clear sunset date on a utility's ability to exercise this right; and that there might exist potential hurdles in the implementation of the Seller buy down right that the Commission has not yet identified.
>
> As a result of this opposition, the Commission is not including authorization for this unilateral termination right in the RAM PPA at this time. The Commission continues, however, to support the concept of protecting ratepayers from unbounded exposure to potential increases in transmission network upgrade costs that occur after a project has been selected in a RAM auction and a utility has executed a RAM PPA. To this end, the Commission will revisit this issue after the close of the third RAM auction in a more comprehensive manner in an effort to develop consensus among parties on the best way to implement this type of ratepayer protection in the future.

We also agree with IEPA that the proposed termination right, along with existing incentives, promotes "gold-plating" of network upgrades (AFR, p. 7):

> The upgrades paid for by the generator will be owned by the PTO. Under the provision the Decision requires, the PTO has an incentive to "gold-plate" its system since it will reap the rewards of a more reliable system and increased rate-base while avoiding any responsibility for the costs of upgrades.
>
> Thus, the Decision's cost allocation approach may not accomplish its intended purpose of protecting ratepayers from excessive costs. If the PTOs who construct the network upgrades have no incentive to control costs once the cost cap is exceeded, it is unclear how this approach ultimately protects ratepayers. Although ratepayers may be protected from network upgrade costs above the cap amount in the short term, the Decision's approach will ultimately increase the overall costs of renewable generation.

The Clean Coalition has been active in R.11-09-011, Rule 21 interconnection reform, and we are currently pursuing a Standardized Pricing approach through cost-averaging. This approach will allow developers to know with certainty early in the interconnection process what their interconnection costs will be, with no "true up" at a later date. While Rule 21 is limited to distribution grid interconnection at this time, our hope is that our Standardized Pricing recommendations will be adopted in the transmission grid context in the future. If this is the case, concerns about "gold-plating" of network upgrades may become moot in many situations because the cost of network upgrades would be shared appropriately, rather than being placed on a single developer. Moreover, the network upgrade costs would not be subject to true up, mooting the problem that is at issue in the present context. While Standardized Pricing is not in play in this proceeding at this time, we mention this new policy because of our hope that it will be adopted not only in the Rule 21 context but also in the network upgrade context before too long.

In sum, the strong weight of evidence, and the interests of fairness, symmetry and consistency between procurement programs, suggests that the Commission should grant IEPA's AFR and strike the termination right.

B. Possible remedies

The Clean Coalition's preferred remedy is for the Commission to grant IEPA's AFR and strike the termination right. However, short of that preferred remedy, we suggest the following.

1. **The termination right should expire within 30 days from the date the IA is signed by both parties**

Interconnection studies can be received after an IA is signed, through re-studies, for example, that are triggered by dropouts. Accordingly, the certainty that results from the signing of the IA, which is justifiably expected by developers clearing this major project milestone, may be entirely mooted by the termination right. Accordingly, we recommend, if the Commission declines to eliminate the termination right, that the termination right expire at thirty days from the date the IA is signed by both parties. This will very substantially mitigate the increased uncertainty from the termination right because it will temporally limit its operation.

2. Sellers should be provided 60 days to remedy excess network upgrade costs, with an additional 30 days for utility review

As a partial remedy, the Commission should at the least provide sellers 60 days to remedy the excess network upgrade costs. Recurrent Energy argued in comments on the draft RAM resolution (E-4546):

> We recommend a more prudent and commercially reasonable process. The interconnection customer would be afforded 60 days after notifying the utility that network upgrade cost estimates exceed the cost threshold, to review study assumptions, meet and confer with the responsible entities, and correct any demonstrable errors. The utility could have 30 additional days to assess the consultant's findings and make a final determination, and any termination at that point would trigger the Seller's buy-down right.

Interconnection studies are two parts science and one part art, and mistakes are sometimes made. Moreover, not all options are considered by utility engineers completing the studies, who are not incentivized to keep costs as low as feasible. By allowing 60 days for developers to meet and confer with the utility and/or CAISO, in order to negotiate over projected network upgrade costs, solutions may be found that won’t kill a project or result in unjustified network upgrade costs.

II. Conclusion

The Clean Coalition appreciates the chance to provide comments on IEPA’s Application for Rehearing.

Respectfully submitted,

TAM HUNT

December 31, 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 31st day of December, 2012, at Santa Barbara, California.

Tam Hunt

Clean Coalition

Appendix A: Clean Coalition comments on draft Resolution E-4546

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

RESOLUTION E-4546	FILED November 8, 2012

CLEAN COALITION COMMENTS

ON RESOLUTION E-4546

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October 25, 2012

CLEAN COALITION COMMENTS

The Clean Coalition respectfully submits these comments on draft Resolution E-4546.

The Clean Coalition is a California-based nonprofit organization whose mission is to accelerate the transition to cost-effective local renewable energy that strengthens local economies, minimizes environmental impacts, and enhances 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.

Summary:

- The Clean Coalition supports the Large-Scale Solar Association and Recurrent Energy's comments on the draft resolution.
- The Clean Coalition supports the principle of limiting ratepayer exposure to network upgrade costs because wholesale DG should, by definition, take advantage of existing distribution and transmission capacity

- However, we support deferring any cost cap for network upgrades until the time that evidence of a real problem is presented, per the Commission's previous directions for amending the RAM program, which require evidence prior to program modifications due to the greater unintended costs and consequences of SCE's proposal
- We agree with LSA and Recurrent that the buy-down option for network upgrades that exceed the cost cap is problematic, further supporting our first point
- If the Commission decides to support the termination right SCE seeks, the termination right should expire automatically after 30 days from the IA being signed by both parties – with no allowance for termination after "any interconnection study" is received by seller, per SCE's overly broad current language
- Moreover, the seller should have 60 days to remedy excess network upgrade costs through meetings with the PTO, correcting any errors, etc. The utility should then have 30 days to review before exercising its termination right. This would require that the utility not be able to exercise its termination right until 90 days has expired from the time seller is notified of excess network upgrade costs
- The numbering in SCE's proposed PPA changes should be corrected with respect to the seller's buy down right

I. Discussion

A. The Commission must require evidence of a problem before modifying the RAM program

The Clean Coalition supports the intent of SCE's proposal to protect ratepayers from increased network upgrade costs in the RAM program, due to our long-standing concern that Wholesale DG (WDG) projects should utilize the existing transmission and distribution grid as much as possible. We also supported the cost cap proposed levels (lesser of $100,000 or 25% increase in cost) in previous comments.

However, we agree with the Large-Scale Solar Association (LSA) and Recurrent Energy that SCE's proposed solution is too restrictive, is highly uncertain in many ways, and lacks the evidence required by the Commission's own clear precedent for making changes to the RAM program. We were reminded of this evidentiary standard by LSA and Recurrent Energy and, combined with other problematic aspects of the currently proposed changes, recommend at this time the amendments detailed below.

A recurring theme in policy debates at the Commission in recent years is the need for data/evidence to make informed policy choices – and the too-frequent lack of good data/evidence. In this circumstance, LSA and Recurrent correctly point out clear precedent in the RAM decisions and resolutions that requires changes to the RAM program be made only based on evidence. SCE has failed to provide any evidence that excessive network upgrade costs have or will be a problem for any RAM projects, or that the risk of unbounded ratepayer exposure is significant. While the Commission appropriately believes that such unbounded exposure is unacceptable, the Commission has multiple goals to balance and the cost of remedies must be commensurate with the risk. As proposed, the remedy unduly burdens all projects with new contractual uncertainty that increases risk to financing entities, resulting in higher project costs, which are ultimately born by ratepayers.[2] While the ratepayer risk the Commission is seeking to avoid is not supported by evidence, the impact of the remedy on energy costs paid by ratepayers is virtually certain.

If RAM is to be successful, the Commission must be very diligent to not impose additional unwarranted hurdles. The risks far outweigh the alleged benefits with respect to the issue of excessive network upgrade costs. Accordingly, the prudent course for the Commission is to defer any changes until evidence is presented by SCE or other IOUs that there is a real problem, and weigh this risk against the cost.

We fear that SCE's cost cap and buy-down right, as proposed, will considerably muddy the waters with respect to certainty and transparency.

B. The buy-down option is too uncertain to be a reliable mitigation option

The Clean Coalition previously felt that the proposed network upgrade cost cap would be significantly mitigated by the proposed buy-down option in SCE's revised PPA section 2.04(a)(i) and (iii). However, as LSA and Recurrent highlight, the proposed buy down right is very problematic in light of the qualifications to that buy-down right in section 2.04(a)(i). Specifically, that section states, in pertinent part:

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[2] If the resulting impact on RAM bids increases the offered/accepted cost of energy (the PPA rate) by just 0.1¢/kWh, ratepayers would pay and additional $46,000 over a 20 year contract for <u>each MW</u>, the equivalent of a $460,000 unanticipated cost on every 10 MW of new capacity (Assuming 2300 MWh/MW capacity per year for 20 years = 46,000 MWh).

> … if Seller elects to exercise its right to pay for any Excess Network Upgrade Costs, but FERC, CAISO, or any Transmission Provider, as applicable, rejects Seller's interconnection agreement, in whole or in part, or modifies Seller's interconnection agreement, in any such case, in a manner that would make Seller unable to comply with Seller's obligation pursuant to Section 2.04(a)(iii)(B) and a Notice of termination is given on or before the date that is ninety (90) days after such rejection or modification by FERC, CAISO, or any Transmission Provider.

(On a drafting note, section 2.04(a)(i) refers to section 2.04(a)(iii)(B), which doesn't exist, but appears to be referring to the buy down right as described in section 2.04(a)(iii)(2)(B).)

The Clean Coalition agrees with LSA and Recurrent that the implications of this language are unclear, and the very open-ended language regarding "FERC, CAISO, or any Transmission Provider" being able to reject the interconnection agreement or to modify the agreement in such a way as to potentially preclude seller's buy-down right, makes the buy-down option no longer a reliable mitigation option against a buyer exercising its termination right.

C. The termination right should expire at thirty days from signing of the IA by both parties

The termination right as proposed by SCE is open-ended because it may be triggered by "any interconnection study" or the signing of the IA. Interconnection studies can be received after an IA is signed, through re-studies for example, that are triggered by dropouts, so the certainty required for developers from the signing of the IA seems to be entirely mooted by this overly broad language. We previously supported the buy-down right as a mitigation option, but SCE's proposed language is far too broad. Accordingly, we recommend that the termination right expire at thirty days from signing of the IA by both parties

D. Sellers should be provided 60 days to remedy excess network upgrade costs, with an additional 30 days for utility review

If the Commission insists on including the proposed network upgrade cost cap and buy down right, at the least the Commission should provide sellers 60 days to remedy the Excess Network Upgrade Costs, as Recurrent argues (pp. 4-5):

> We recommend a more prudent and commercially reasonable process. The interconnection customer would be afforded 60 days after notifying the utility that network upgrade cost estimates exceed the cost threshold, to review study assumptions, meet and confer with the responsible entities, and correct any demonstrable errors. The utility could have 30 additional days to assess the consultant's findings and make a final determination, and any termination at that point would trigger the Seller's buy-down right.

Submitted October 25, 2012 /s/

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