

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 PROPOSED DECISION GRANTING REQUEST OF
CLEAN COALITION FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 11-11-012 AND DENYING REQUEST AS IT RELATES
TO CONTRIBUTIONS TO DECISION 10-12-048

Tam Hunt
Attorney for:
Clean Coalition
16 Palm Ct
Menlo Park, CA 94025
(805) 214-6150

August 7, 2012

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The Clean Coalition respectfully submits these comments pursuant to Rule 14.3.

The Clean Coalition is a California-based nonprofit project of Natural Capitalism Solutions. The Clean Coalition's mission is to implement policies and programs that accelerate the transition to a decentralized energy system that delivers cost-effective renewable energy, strengthens local economies, minimizes environmental impacts, and enhances energy security. The Clean Coalition drives policies to remove the top barriers to Wholesale Distributed Generation (WDG), which is defined as renewable energy systems connected to the distribution grid that sell all electricity produced to the local utility and serve only local load. Since local balancing of energy supply and demand is generally required when more than 20% of energy consumption is served by WDG, the Clean Coalition also advocates for policy innovations to support Intelligent Grid (IG) solutions, such as demand response and energy storage. The Clean Coalition is active in proceedings at the California Public Utilities Commission, the California Energy Commission, the California Independent System Operator, the Federal Energy Regulatory Commission, and other agencies that shape energy policy in California and other states. In addition, the Clean Coalition designs and implements WDG and IG policies and programs at the state, local, and utility level across the country.

The Clean Coalition's points are summarized as follows:

- We request that the Commission either consider our NOI in R.11-05-005 retroactive with respect to its predecessor proceeding, R.08-08-009, or provide permission for us to late-file our NOI for R.08-08-009
- We provide additional information re hours claimed, in support of our substantial contributions
- We also urge the Commission to re-consider its new practice of considering contributions substantial only if a party was the explicit reason for the Commission's decision with respect to a particular issue, as seems to be the new practice

I. Discussion

A. NOI for R.08-08-009

The Proposed Decision reduces the Clean Coalition's requested funding by approximately 2/3 due to the lack of an NOI in R.08-08-009 and due to finding no substantial contribution on a number of items related to D.10-12-048. We hope that the Commission will provide some flexibility for the Clean Coalition to remedy our oversight on the NOI and revise its findings regarding substantial contributions.

The Clean Coalition was involved since 2009 in R.08-08-009 but came in late to the proceeding. Attorney Hunt began working with the Clean Coalition in mid-2010 and recommended that the Coalition wait until the next prehearing conference (PHC) before submitting its NOI. While we were waiting for the next PHC the Commission closed R.08-08-009 and opened R.11-05-005, its successor, with no warning to parties. SB 32 implementation had begun in R.08-08-009, in early 2011, and we were heavily involved in that matter, as we were with the RAM program, so we assumed that R.08-08-009 would stay open at the least to implement SB 32. However, SB 32 implementation shifted into R.11-05-005 and we submitted our NOI in that proceeding, erroneously assuming that our new NOI would suffice for obtaining compensation for our work in R.08-08-009, the predecessor proceeding that had a number of issues carried over into R.11-05-005.

The PD does not interpret events this way and merely noted that we had not filed an NOI in R.08-08-009, disallowing all of our hours for that proceeding (2/3 of our requested compensation).

The OIR for R.11-05-005 states (p. 5): "We transfer the record from R.08-08-009 to this new proceeding and bring forward limited remaining issues." And (p. 17): "This OIR is a continuation of R.08-08-009. While it is formally a separate proceeding, it is substantially similar to the continuation of a phased proceeding." The OIR directs parties seeking intervenor compensation to submit or refresh NOIs in this new proceeding, but did not provide guidance to parties like us who were active in R.08-08-009 but had not yet filed an NOI.

Accordingly, we now request that the Commission either deem our NOI for R.11-05-005 sufficient for compensation purposes with respect to R.08-08-009 or permit us to late-file an NOI for R.08-08-009, which we have attached to these comments.

B. Clarifications and amendment of our compensation request

The PD states, with respect to the Clean Coalition's claim of substantial contributions on the issue of interconnection data and related issues (p. 4): "The decision relied on FIT Coalition's 'pricing comments.' FIT Coalition's work on these comments is not included in this claim."

It is not clear why the PD states such because our compensation claim did not specify the date or title of our comments. Rather, we stated: "Made recommendations on IOU data sharing requirements re interconnection" We clarify now, as we should have in our original request, that the basis for our claim should have been our Oct. 19, 2009, pricing comments, pp. 8-9, as well as our later comments filed on Oct. 29, 2010, pp. 1-4, at the request of Commission staff (Jaclyn Marks), which led to an *ex parte* meeting on these issues (notice filed Nov. 10, 2010).

We have revised our compensation request to include the 2009 hours, which were erroneously left out of our time log even though our compensation request relied on the 2009 comments as part of our claim. We have also attached our email correspondence on these issues, subsequent to our comments on the RAM PD in late 2010, as Attachment A and our revised compensation request showing our additional hours for 2009 as Attachment B.

Similarly, the PD states (p. 5) with respect to our assertion of a substantial contribution on the issue of the program cap, that our claim was based on our 2009 pricing comments. As above, we have amended our compensation claim to include these hours.

With respect to the issue of increased transparency of prices (PD, p. 6), the PD states that the Clean Coalition's analysis of this issue was contained in our pricing comments and that our comments on the RAM PD "did not provide a significant input on this issue." However, our

compensation claim cited our pricing comments and not our comments on the RAM PD, so this conclusion seems to be an error.

In sum, we ask the Commission to reconsider its determination of no substantial contribution with respect to various issues in D.10-12-048.

C. What should constitute a “substantial contribution”?

The Clean Coalition’s efforts in this proceeding resulted in “substantial contributions” as defined in Section 1802(i) of the P.U. Code:

‘Substantial contribution’ means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

The Commission has elaborated on this statutory standard as follows:

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision, even if the Commission does not adopt a party's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected.¹

Finally, the Commission has previously determined that an intervenor’s contribution to a final decision may be supported by contributions to the ALJ’s proposed decision, even where the

¹ D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4.

Commission's final decision does not mirror the proposed decision on that issue.²

This last piece of guidance is crucial because it affirms that compensation may be provided even when the Commission failed to adopt any of a party's recommendations. This makes sense because it may certainly be the case that a party taking part in a proceeding may be vigorous and helpful in comments, briefs, etc., and yet for many possible reasons the Commission fails to adopt that party's recommendations.

In this case, the Commission did in fact accept some of our recommendations in D.10-12-048 and yet the PD finds that we did not make a substantial contribution at all to that decision, independent of the NOI issue discussed above. We discussed in the previous section some items regarding our substantial contributions to D.10-12-048 that required clarification. In this section, we suggest that the PD is mis-applying the Commission's own guidance on what constitutes a "substantial contribution."

Specifically, the PD states, with respect to our claim of substantial contribution on avoided cost and federal law (p. 4): "Substantial contribution is not demonstrated by a mere mentioning of the comments in the decision. Although FIT Coalition's comments on the proposed decision were mentioned in the decision, they did not provide a significant input on the jurisdictional matters. FIT Coalition's specific recommendations in this area were not adopted."

However, the FIT Coalitions' comments on this matter, as stated in our compensation request, were a number of pages in length and were cited by D.10-12-048 first in a list of a number of parties who addressed these issues. The Commission rendered this issue moot, however (as we demonstrate in our compensation request, quoting D.10-12-048: "The federal law issue is rendered moot in this decision because we preserve the IOUs' discretion to reject bids in instances of market manipulation or non-competitive pricing compared to other renewable procurement opportunities"), by avoiding the federal law issue entirely in D.10-12-048. It seems that the bar for finding a substantial contribution is being set inappropriately high if this set of facts does not result in a finding of substantial contribution, and we urge the Commission to reconsider this conclusion.

² D.99-11-006, pp. 9-10 (citing D.99-04-004 and D.96-08-023); D.01-06-063, pp. 6-7.

D. Errors in the PD

The PD appears to include some calculation errors, or at the least fails to explain some revised figures.

- P. 11 revises our intervenor compensation claim preparation time for 2011 from 13.25 hours and \$165 per hour (for attorney Hunt) to 5.96 hours and \$157.50. This change is not explained and appears to be incorrect. We urge the Commission to re-instate our 13.25 hours and the rate of \$165 per hour.
- Footnote 15 correctly notes that we mistakenly requested \$175 per hour and it should be \$165 (half of \$330). However, no explanation is provided for the reduced hours for preparing our compensation claim or the \$157.50 hourly rate revision.
- Similarly, Hunt's compensation claim preparation time for 2012 was reduced from 4.5 hours to 2.03 hours, with no explanation. This also appears to be incorrect, particularly given footnote 16's explanation, and we urge the Commission to correct this apparent mistake.

Respectfully submitted,

TAM HUNT



Attorney for:
Clean Coalition
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
(805) 214-6150

Dated: August 7, 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 7th day of August, 2012, at Santa Barbara, California.

Tam Hunt

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

Clean Coalition

Attachment A: Email correspondence with Jaclyn Marks subsequent to the Clean Coalition's comments on the RAM PD

On Fri, Oct 8, 2010 at 4:36 PM, Marks, Jaclyn<jaclyn.marks@cpuc.ca.gov> wrote:

Craig,

Per our conversation, please send me examples of other utility maps that you would like CA IOUs to emulate. Please explain what you like and don't like about the examples provided. In the past, FIT Coalition pointed to the Ontario maps as good example. Please send me that and anything else that is relevant. Also, we'd like to know how you view PG&E's map and if you think it will be helpful to identify projects. Here is a link to PG&E's current map: <http://www.pge.com/b2b/energysupply/wholesaleelectricssolicitation/PVRFO/pvmap/>.

Lastly, you mentioned that RPS bids are failing at a rate of 97%. Please provide me an explanation of what data and information that that figure is based on, since the bid information is mostly confidential.

Thanks,

Jaclyn

Jaclyn Marks – Energy Division - Renewables Portfolio Standard Team – California Public Utilities Commission – jaclyn.marks@cpuc.ca.gov – [415-703-2257](tel:415-703-2257) – <http://www.cpuc.ca.gov/renewables>

From: Craig Lewis [mailto:craig@fitcoalition.com]
Sent: Friday, October 08, 2010 4:54 PM
To: Marks, Jaclyn
Cc: ted@fitcoalition.com; Baker, Amy C.; Sahm White

Subject: Re: Follow-ups from Thursday

Hi Jaclyn,

It was a pleasure seeing you again yesterday, and I will get Sahm White, one of the FIT Coalition's lead analysts to get you some details on prime examples for pre-identifying viable interconnection locations.

With respect to the 97% failure rate, see the chart on slide 6 in the first presentation listed at this webpage: <http://www.fitcoalition.com/studies-presentations/>

You will see a CPUC chart that shows an energy-based failure rate in the high-90s, and given that fact that the vast majority of accepted projects are large capacity, the project-based failure rate is even higher.

The FIT Coalition provided a comprehensive update of its major campaigns this morning, and I will forward that to everyone on this email; as multiple FIT Coalition campaigns are relevant to the CPUC. In fact, I hope that you can forward the update to Mr. Wheeler highlighting the need to express CPUC support for the States Rights FIT bill that was introduced by US Senator Sanders last week. As you know, Senator Feinstein and Senator Boxer would both appreciate hearing support from the CPUC; or at least from CPUC Commissioners...

Best regards,

Craig Lewis
Executive Director
FIT Coalition
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
[650-204-9768](tel:650-204-9768) office
[650-796-2353](tel:650-796-2353) mobile

craig@fitcoalition.com
www.fitcoalition.com

From: Sahm White [mailto:sahm@fitcoalition.com]

Sent: Friday, October 15, 2010 4:51 PM

To: Marks, Jaclyn

Subject: Re: FIT Coalition comments on RAM PD FINAL.pdf

Jaclyn,

Thanks again for contacting me to solicit more specific details on exactly what information we're calling for from the IOUs.

To be most accurate, we're contacting a range of solar developers who have first hand experience and are liable to have very clear opinions about what would and would not be most useful. We were planning a small conference on this in a couple of weeks, but we'll see if we can get a meaningful response over the next few days.

We also are planning to respond to the closely related request for examples of good mapping approaches to interconnection data next week.

We think it would make sense to plan a short meeting with you next week. If agreeable, would next Wednesday work for you?

In the interim I'm attaching our very preliminary thoughts and mapping examples as they might be useful, but this is not yet for the record. I'm hoping we'll have these more developed before Wednesday.

Again, thank you for calling and we're really happy to be working with you and provide any assistance possible as we both work toward meeting our RE goals, but I am reminded that we are stretched thin. Assuming the finished results are worthwhile, would it be inappropriate to consider these as consulting hours?

Sahm

Kenneth Sahm White
Economics & Policy Analyst
[831-425-5866](tel:831-425-5866)
sahm@fitcoalition.com

FIT Coalition

2 Palo Alto Square

3000 El Camino Real, Suite 500

Palo Alto, CA 94306

From: **Marks, Jaclyn** <jaclyn.marks@cpuc.ca.gov>
Date: Mon, Oct 18, 2010 at 4:27 PM
Subject: RE: FIT Coalition comments on RAM PD FINAL.pdf
To: Sahm White <sahm@fitcoalition.com>

Sahm,

Thank you for providing this, it is very helpful. I'm happy to set up a time on Wednesday to discuss. Unfortunately, we cannot pay you as a consultant for this input. First, we don't have any consulting dollars. Second, when we pay consultants, we have to run a solicitation and the contract has to be approved by the state, so it's a long complicated process. On the other hand, the CPUC offers Intervener Compensation to non-profit parties that make a significant contribution to a PUC decision. You can learn more about this program here: <http://www.cpuc.ca.gov/PUC/aboutus/Divisions/CSID/Public+Advisor/publicparticipation.htm>. Many parties use this program to fund their participation in the PUC process (UCS, NRCD, TURN, Sustainable Conservation, etc.).

Jaclyn

Jaclyn Marks – Energy Division - Renewables Portfolio Standard Team – California Public Utilities Commission – jaclyn.marks@cpuc.ca.gov – [415-703-2257](tel:415-703-2257) – <http://www.cpuc.ca.gov/renewables>

Attachment B: Amended compensation request (filed separately)