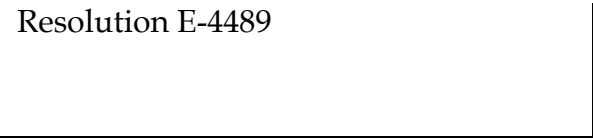


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Resolution E-4489



CLEAN COALITION COMMENTS ON
RESOLUTION E-4489

Rob Longnecker
Kenneth Sahn White
Clean Coalition
16 Palm Ct
Menlo Park, CA 94025
(805) 705-1352

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CLEAN COALITION COMMENTS

The Clean Coalition respectfully submits these comments on Resolution E-4489.

The Clean Coalition is a California-based advocacy group, part of Natural Capitalism Solutions, a non-profit entity based in Colorado. The Clean Coalition advocates primarily for policies and programs that enable the “wholesale distributed generation” market segment, which is generation that connects to the distribution grid for local use. The Clean Coalition is active in proceedings in many regulatory venues, including the Commission, Air Resources Board, and the Energy Commission in California; the Federal Energy Regulatory Commission; and in other state and local jurisdictions across the country.

Recommended changes:

Ordering Paragraph 11.

Each investor-owned utility may include in its RAM PPAs a unilateral termination right for Buyer in instances where the cost of ratepayer funded or reimbursed transmission upgrade costs increase by more than ~~10%~~ 33% and \$100,000 over the study estimate provided at the time of the RAM RFO. Seller shall be offered the opportunity to provide a non-reimbursable upgrade cost contribution sufficient to avoid termination under this provision.

Our concern regards the expansion of the language that “Provides unilateral termination right for Buyer in the event that expected ratepayer reimbursed transmission system upgrade costs increase by more than 10% over estimates provided by Producer when it bid into the solicitation.” In summary, our points are:

- The proposed 10% basis for termination is overly restrictive, potentially increases cost to ratepayers and is not supported by cost-benefit criteria.

- Without modification the proposed 10% threshold resulting in placing disproportionate risk upon the seller over which the seller has no control, and based upon changes in estimates provided by the buyer.

- The issue of cost certainty is an ongoing and urgent problem in interconnection. This was most recently recognized in the Rule 21 Phase I Settlement Agreement on Interconnection (Rulemaking 11-09-011) filed with the Commission March 16th 2012, which specifically stated that “resolving the issue of cost certainty is a high priority and that the key issues are: (1) the variability of potential costs, and (2) the potentially lengthy time frame before final costs are known”.
- The current process for the determination and assignment of interconnection upgrade costs is largely non-functional, resulting in official "order of magnitude" estimates by the IOUs that are far too uncertain to estimate the likelihood of a 10% variation from estimated cost, and which are subject to change at a later date in response to the actions of electrically related project applicants.
- While we recognize the need to protect ratepayers, PPAs that are subject to cancelation due to circumstances that can neither be predicted nor controlled by the project owner are not financeable. The proposed “10% language” in the PPA will increase project development risk and associated financing cost and availability, thereby limiting competition and, ultimately, increasing bid prices and ratepayer costs.
- Resolution E-4414 sought to address this same transmission cost issue by adopting SCE’s proposal to require projects to have completed a System Impact Study, a Phase I interconnection study, or have passed the Fast Track screens in order to participate in each auction. Before adopting the “10% Language”, evidence should be provided that demonstrates that the proposal adopted in E-4414 has not been sufficient to protect the interests of ratepayers.

- Relying solely on a percentage threshold is arbitrary and disproportionate to possible cost-benefit. A project with a very small transmission upgrade cost is subject to cancellation while a similar sized project with estimated greater costs would not be subject to cancellation despite identical or greater ratepayer impact. To address this, we would recommend that a minimum dollar threshold value be employed, and recommend \$100,000 as the threshold.
- In the event that the threshold is triggered, developers should be given the option to “make whole” the incremental costs up to the threshold, thereby protecting the viability of their project
- The “10% language” and its impact on the financeability of the PPA will result in higher risks and higher financing costs for developers, unnecessarily restricting competition and likely resulting in higher bid costs. Cost-benefit analysis should be applied to future review to determine if the benefit of this provision outweighs the cost of higher bids. For example, assuming 1,000 MW of procurement, a provision that results in bids increasing by only 0.1¢/kWh would cost ratepayers an additional \$1.5 million per year, or \$30,000,000 over a 20 year contract term. Increased costs of financing is likely to have greater rate impact, while the actual ratepayer cost of increased transmission upgrade reimbursements may be far lower.
- From a process perspective, it is troubling to see language from an Advice Letter (AL 2571) filed over a year ago and referring specifically to the “SPVP Standard PPA Terms and Conditions for Contracts Greater than 5 MW and Less than 10 MW” becoming the proposed language for all RAM PPAs for all project sizes. The SPVP program was designed to avoid any transmission interaction, unlike the RAM. Given the impact of the “10% language” and the unexpected expansion in scope of this language, we believe that comments must be heard from stakeholders.

While we are aware that our comments address a substantive issue late in the process, the major and unexpected expansion of the “10% Language” means that

previous opportunities to comment may have been missed by numerous parties, especially those focused on projects smaller than 5 MW or greater than 10 MW who felt the language was not relevant to them. As such, we encourage the Commission adopt a less restrictive provision and revisit the issue at the next opportunity.

Specific comments

a. Cost Certainty

The issue of cost certainty is an ongoing concern in interconnection reform, and both ratepayers and developers require relatively accurate and stable cost estimates in order to determine the viability of a specific project. As a result, there is a natural tension on this issue and attempts to protect ratepayers from occasional costs must be balanced with the long term benefit of reduced supplier risk in creating an active, competitive marketplace.

In Resolution E-4414, the Commission adopted SCE's proposal to address this issue by requiring projects to have completed a System Impact Study, a Phase I interconnection study, or have passed the Fast Track screens in order to participate in each auction.

This offers a reasonable compromise between the needs of the IOUs and the needs of developers and we are unsure why it is necessary to further restrict the developers on this issue. Prior to further action, we recommend review of evidence that the approach proposed in E-4414 has been ineffective.

If it has been ineffective to date, provide data on how often it has been ineffective and what the resulting costs have been to ratepayers. Data should be provided on a per project basis, rather than aggregated, as one large unplanned transmission upgrade could materially impact the analysis. In addition, providing information on a per project basis will inform the potential solution of allowing developers to "make whole" the incremental costs up to the threshold, thereby protecting the viability of their project.

b. Proposed 10% threshold is arbitrary and too restrictive

The proposed 10% threshold is arbitrary and no data has been provided as to why the 10% threshold was chosen. If there is data or analysis behind the 10% threshold, it should be shared with stakeholders. In addition, given the “order of magnitude” problem described above, developers must produce their own estimate of interconnection costs and attempt to reconcile this estimate with the numbers provided by the IOUs. It is unreasonable for the IOUs to offer cost estimates that are often inaccurate and simultaneously expect developers to be subject to accuracy within 10%. Given our conversations with developers and their experiences in this process, we believe that a threshold of 33% is more just and reasonable while addressing the intent of the draft language.

c. Developers should be given the option to “make whole” the incremental costs up to the threshold

In the event that the threshold is triggered, developers should have the option to cover the cost differential between actual costs and the threshold. Providing this option will allow developers to continue development of the project, while protecting ratepayers from being burdened with the cost differential.

d. Process

Given the amount of time since SCE submitted Advice Letter (AL) 2571 on April 5, 2011 and the fact that the “10% language” was originally only relevant to the “SPVP Standard PPA Terms and Conditions for Contracts Greater than 5 MW and Less than 10 MW”, it is apparent that many parties did not see the need (or have the opportunity) to comment on the original language. To now implement a major and unexpected expansion of this “10% language” without feedback from stakeholders seems unreasonable. We urge the Commission to spend more time on this issue and not

simply hand down an unvetted expansion of the "10% Language" to the entire RAM program.

Respectfully submitted,

Rob Longecker
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Clean Coalition
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
(831) 425 5866

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 9th day of April, at Palo Alto, California.

Kenneth Sahm White



Clean Coalition

Appendix A

Ordering Paragraph 11. ~~The investor-owned utilities shall not use network upgrade cost caps. The investor-owned utilities shall add the most recent estimated interconnection study costs of transmission network upgrades resulting from the project's interconnection study to bid prices for ranking purposes. Each investor-owned utility may include in its RAM PPAs a unilateral termination right for Buyer in instances where the cost of ratepayer funded or reimbursed transmission upgrade costs increase by more than 10% over the study estimate provided at the time of the RAM RFO.~~

FINDINGS AND CONCLUSIONS

1. The modifications proposed by staff are consistent with the direction given in Section 12.1 of D.10-12-048.
7. Creating a unilateral termination right in the Renewable Auction Mechanism Power Purchase Agreement for the utility in instances when transmission upgrade costs increase by more than 10% beyond study estimates provided during bid selection serves a dual purpose: it protects ratepayers from excessive, unaccounted for transmission network upgrade costs, and ensures that producers will not risk Power Purchase Agreement termination if upgrade costs increase less than 10%.