

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 11-05-05
(Filed May 5, 2011)

CLEAN COALITION MOTION FOR IMMEDIATE AMENDMENTS OF
AB 1969 CREST POWER PURCHASE AGREEMENT

Tam Hunt
Attorney for:
Clean Coalition
16 Palm Ct
Menlo Park, CA 94025
(805) 705-1352

August 15, 2011

CLEAN COALITION MOTION FOR IMMEDIATE AMENDMENTS OF
AB 1969 CREST POWER PURCHASE AGREEMENT

The Clean Coalition respectfully submits this motion, pursuant to Rule 45 (motions), for immediate amendments of Southern California Edison's AB 1969 CREST feed-in tariff/CLEAN program.

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 vigorous feed-in tariffs and "wholesale distributed generation," which is generation that connects primarily to distribution lines close to demand centers. Clean Coalition staff are active in proceedings at the Commission, Air Resources Board, Energy Commission, the California Legislature, Congress, the Federal Energy Regulatory Commission, and in various local governments around California.

We are submitting this motion in order to quickly address a major hurdle to wholesale distributed generation development under SCE's AB 1969 (CREST) program. The primary hurdle is posed by the termination and contract modification provisions in the existing CREST Power Purchase Agreement (PPA), each of which make the PPA unfinanceable. We request that the Commission require SCE to issue a Tier 1 Advice Letter, no later than September 1, to modify the existing CREST PPA according to the specific changes detailed below. Quick action by the Commission will allow for many projects to meet federal deadlines for major tax benefits, which will help kick start California's economy.

I. Background

The Clean Coalition was involved earlier in 2011 in SCE's now-suspended CREST PPA reform process, which was initiated after a number of parties informed SCE that its PPA included terms that preclude the use and availability of traditional non-recourse financing. We submitted written comments to SCE as part of its stakeholder process, recommending a number of changes to their proposed new PPA.

The Clean Coalition is in dialogue on a regular basis with a wide and diverse number of renewable energy developers and financiers active in California. We do not represent these developers and financiers. Rather, we look to developers and financiers for insight with respect to hurdles they are facing, and for recommendations, with respect to development of wholesale DG. Our organizational focus is on rapid development of wholesale DG as an under-utilized and cost-effective market for helping to meet California's renewable energy and greenhouse gas emissions reductions goals.

Stemming from our discussions with developers and financiers, a number of parties have signed on (Attachment C) as supporters of this motion. These parties either have CREST projects in the SCE queue or hope to have such projects, and their projects are held up by fatal flaws in SCE's current CREST PPA.

CREST is a program with the potential to contribute significantly in meeting California's renewable goals (along with other utility AB 1969 programs). Despite the promise of CREST, the program is handicapped by a standard contract that is not generally financeable or commercially practical. As direct evidence for this conclusion we need look no further than the fact that in over 2.5 years of this program being active only two new projects in SCE territory, constituting 2.25 MW, have come online.¹

¹ <http://www.sce.com/EnergyProcurement/renewables/crest.htm>.

Traditional commercial lenders have almost uniformly rejected the current CREST PPA as a basis for funding projects due primarily to termination and change provisions in sections 4 and 14.

Beginning in late 2009, stakeholders began requesting that SCE initiate a stakeholder process to improve the CREST PPA and allow for financing of CREST projects.

Ultimately, on May 19, 2011, SCE responded to developer and Commission pressure by launching a stakeholder process to reform the CREST PPA. Stakeholders worked in good faith with SCE and the Commission to complete reforms, with a targeted September implementation date. Developers have been working steadily on project development, based on this erstwhile process, and have invested many millions of dollars to support development of CREST projects.

The timeline for PPA reform is critical due to hard deadlines for the federal Section 1603 cash grant program at the end of 2011. Cash grant eligibility may be preserved by completing work of a significant nature on the project or investing 5% of each project's tax basis in equipment destined for that project by the end of 2011. Lenders and investors require, however, that a PPA be in place for such investments to be considered sufficiently credit worthy.

We estimate, based on conversations with developers and financiers, that over 100 MW of CREST projects could move forward in 2011 if the CREST PPA is modified in a timely manner. If we assume, for simplicity, that a minimum of 100 MW of CREST projects are built using the Federal 1603 Grant at \$3,500/kW, this could amount to a total of about \$105 million in Cash Grant funds for project development in California - with the concomitant job creation and sales tax revenue this will generate.

While we have recommended that the Commission implement SB 32 in a phased manner such that at least some PPAs may be executed in 2011, we cannot at this point

be assured that the Commission will be in a position to implement our recommendations. It is, however, feasible that the Commission could complete the requested process in this motion well before the end of 2011. In fact, the process of preserving Federal Cash Grant eligibility will require several weeks of work and physical acquisition of equipment in advance of year end, thus necessitating that this motion be carried to implementation well in advance of year end and no later than October, 2011. It is crucial that the Commission act quickly on our motion if development funds are to be preserved for California projects.

Despite the sustained efforts of many parties and the expressed good will and intent of SCE and the CPUC, the PPA reform process was suspended by SCE on July 21, one day prior to SCE's targeted July 22, 2011 distribution of the revised CREST PPA.

The July 21 SCE Notice states:

Notice to all interested parties: On May 19, 2011, Southern California Edison Company ("SCE") launched a stakeholder process to reform SCE's pro forma CREST PPA ("CREST PPA"). SCE received and has been reviewing stakeholder feedback on SCE's proposed new pro forma CREST PPA. Originally, SCE had targeted July 22, 2011 for the distribution of the revised CREST PPA.

However, in light of the California Public Utilities Commission's ("CPUC") current implementation of SB 32, which would replace the existing CREST program with a new Feed-in-Tariff, SCE is suspending the stakeholder process until further notice. SCE will consider comments it has received in this stakeholder process in the implementation of SB 32.

Given the limited time remaining in the year, the current motion is not directed at resuming the reform process but rather focused on a few critical changes for PPA execution and traditional non-recourse financing to proceed on the projects in 2011. The motion is intended to allow only those few critical changes needed to make the existing program work so that this CREST reform process does not become mired in additional PPA issues that will be litigated within the SB 32 proceeding.

The requested reform process requires quick action on the behalf of all parties, otherwise millions of dollars in federal tax benefits will be lost to the state, along with significant job creation and immediate progress toward the State’s RPS goals. California also stands to lose long term investment from developers who rely on the State to structure its renewable programs in a way that encourages investment and enables project development.

II. Motion

The Clean Coalition requests that the Commission adopt a short list of key changes to the PPA that will make CREST projects financeable in 2011 and available until SB 32 is implemented. The specific changes requested follow:

- Implement a targeted set of language changes using contract language from SCE’s existing SPVP contract (see chart below), a readily available contract that SCE and the Commission have already approved for a similar program
- Allow for immediate execution of PPAs in order to facilitate cash grant investments by developers by the end of 2011 and extension of the allowed development term to proportionally accommodate any unusual delays on the part of SCE.

Table 1. Summary of Requested CREST PPA Changes.

Issues	Action	Suggested Changes
1) Section 2.8 - Date of Initial Operation	Modify	Insert extension for SCE related delays
2) Section 4 - Term & Termination	Replace*	Use Section 6 from SCE’s SPVP contract
3) Section 12 - Assignment	Replace*	With Section 18 from SPVP contract
4) Section 14 (14.2 and 14.4) - Contract Modification	Remove*	Remove 14.2 and 14.4
5) General Contract Language (Force Majeure and Indemnification)	Add	Add Sections 9 and 16 (Force Majeure and Indemnification) from SCE’s SPVP contract

6) Tariff and IFFOA

Modify*

- 1) Tariff change to accept immediate PPA execution on projects in SIS
- 2) Option to select IFFOA or other interconnection agreement in use by SCE

The specific rationale with respect to each change is provided in Attachment A. Actions marked with an asterisk are considered absolutely necessary for the resulting PPA to be financeable. These recommended changes are reflected in the attached red-lined PPA (Attachment B). Again, we request that the Commission require the Advice Letter to only specify these changes and not include other changes or provisions other than those required for legal accuracy and consistency.

Time is of the essence

We request that the Commission require SCE to issue a Tier 1 advice letter by September 1st at the latest, in order for CREST PPAs to be executed by October 1st. This timeframe will allow for project equipment procurement or other investment sufficient to meet the cash grant deadline of Jan. 1, 2012. **Due to the extraordinary nature of the current situation, we also request that the Commission utilize Rule 45 (h)² and issue its ruling on our motion before responses and replies are submitted.**

Respectfully submitted,

TAM HUNT



Attorney for:

² "Nothing in this rule prevents the Commission or the Administrative Law Judge from ruling on a motion before responses or replies are filed."

http://docs.cpuc.ca.gov/published/Rules_prac_proc/26592-16.htm.

Clean Coalition
2 Palo Alto Square
3000 El Camino Real, Suite 500
Palo Alto, CA 94306
(805) 705-1352

Dated: August 15, 2011

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 15th day of August, 2011, at Santa Barbara, California.

Tam Hunt

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'TH' followed by a long horizontal stroke.

Clean Coalition