

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 08-08-009
(Filed August 21, 2008)

CLEAN COALITION REPLY BRIEF ON SB 32 IMPLEMENTATION

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The Clean Coalition respectfully submits this reply brief on SB 32 implementation, pursuant to Rule 14.3 of the California Public Utilities Commission's Rules of Practice and Procedure.

The Clean Coalition is a California-based advocacy group, part of Natural Capitalism Solutions, which is 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.

I. INTRODUCTION

The Clean Coalition again commends the Commission for recognizing the importance of unleashing the wholesale distributed generation ("WDG") market as an essential component in California's pursuit of economically and environmentally sustainable energy supplies for the State of California, and of achieving the Renewables Portfolio Standard (RPS) mandates and greenhouse gas reduction goals on schedule. As we previously noted, the urgency of developing the WDG market has been increased by legal challenges to siting transmission and larger renewable energy projects.

With the contract and pricing certainty of a FIT program such as SB 32, coupled with rates reflecting the locational, environmental, and long-term avoided cost values of WDG, the Commission can provide the necessary market certainty to finally unleash this market.

II. REPLY COMMENTS

A. Increasing project size to 3 MW (or 5 MW as the Clean Coalition has recommended)

SCE and SDG&E argue that increasing to 3 MW will require more complex interconnection and review. This blanket assertion is not supported by fact. Current interconnection rules (WDAT or Rule 21) more than adequately cover any risks to the grid from interconnecting smaller WDG projects to the distribution grid, whether interconnection is under Fast Track or not. PG&E has already taken a strong step in streamlining interconnection of projects up to 5 MW by proposing WDAT Fast Track interconnection for projects up to 5 MW, depending on the line voltage. This is a significant expansion from the previous 2 MW limit.

SMUD clearly demonstrated in their own FIT program that 5 MW facilities do not require extended timelines for safe interconnection: a staff of two completed all studies for their 100 MW program in just a few months. Relative to SMUD's size, in comparison to the three IOUS, this program is equivalent to three times SB 32's 750 MW.

B. Grid transparency

We note that broad support exists among parties for better grid transparency and queue information. This information is required under RAM and is of great value beyond either the RAM or SB 32 programs. SB 32 is intended to offer a clear and consistent price for renewable energy based on value to ratepayers and to ensure that unnecessary interconnection barriers do not interfere with this market. However, there is no need for a "one size fits all" or lowest common denominator interconnection process; what is needed is a clear roadmap of the interconnection landscape so that each participant can identify barriers and determine the route best suited to their particular project(s). The

utility interconnection data maps developed to date – PG&E in particular – are a major step forward in making this information available on a widespread basis. We note that SCE has thus far been the laggard in supplying good interconnection maps and we urge the Commission to prod SCE further in the right direction.

C. PURPA

Some parties have raised concerns about federal preemption under PURPA with respect to setting feed-in tariff rates. FERC has made clear in recent decisions, however, that states do have authority to set feed-in tariff rates for QFs and that states can create multi-tiered pricing structures if state law requires procurement of renewable energy by utilities. Last, FERC made clear in recent decisions that states may require utilities to pay for RECs independent of any avoided cost calculations.

SCE also argues that the QF settlement methodology results in a different avoided cost calculation than the applicable MPR for the same project. However, SCE fails to note that the MPR includes avoided emission costs (greenhouse gases and criteria pollutants), not just production costs. SB 32, however, requires inclusion of environmental benefits in setting the FIT price. SCE contests this feature of SB 32 as preempted by federal law, but this argument misinterprets federal and recent FERC guidance. The QF pricing method referenced by SCE merely establishes the busbar energy price and does not include associated attributes that the utility would acquire under SB 32 procurement, including line loss and related locational benefits, REC value, various emission reduction credits or other factors, all of which are either allowed or required as part of the avoided cost calculations under PURPA.

D. Locational Benefits (LB), Environmental Benefits (EB), & Customer indifference

In D.09-12-042 (p, 17), the Commission addressed the issue of ratepayer indifference in the tariff developed pursuant to AB 1613. The same reasoning can be applied with respect to SB 32: “In light of these considerations, we find that customer indifference under AB 1613 would not be achieved if the price paid under the program only reflected the market price of power. As discussed, since customers who are not utilizing the eligible CHP system will receive environmental and locational benefits from these systems, the price paid for power should also include the costs to obtain these benefits.”

E. Pricing

SCE claims that the legislature did not intend for the value of locational benefits to affect the payment price based on distinguishing the use in SB 32 of “value” and “payment.” SCE argues (p. 10):

Section 399.20(e) states: “The commission shall consider and may establish a value for an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit.” How the Commission applies that “value” to a contract under SB 32 is unclear and vague. It is certain, however, that one should not view any “value” that the Commission considers or establishes as an opportunity to increase the contract price under SB 32. In Section 399.20(d)(1) & (2) the statute specifically identifies “payment” for determining how much the utilities will pay for electricity generated under SB 32.²¹ In Section 399.20(e), the Legislature specifically states that the Commission should consider the “value” of locational benefits. By distinguishing between “payment” and “value,” the Legislature demonstrated its intent not to increase the contract price through Section 399.20(e). Accordingly, the Commission should reject any proposal that argues otherwise.

SCE adds (p. 11, emphasis in original, citations omitted): “Given the vagueness of the statute’s language and that Section 399.20(e) only requires the Commission to *consider* the value of locational benefits, and does not require the Commission to *establish* one,

the Commission should refrain from establishing and applying a value for locational benefits in implementing SB 32.”

This is a very poor legal argument in that it makes the key language in SB 32 on the “value” of locational benefits surplusage. Legislative language becomes surplusage when it is interpreted in such a way that it becomes meaningless or superfluous. Courts must avoid interpreting legislation in such that language becomes surplusage, but this is exactly what SCE has done in its interpretation of SB 32. What does “value” mean if not a direction that the Commission may provide a value for payment under SB 32’s feed-in tariff?

The statute clearly makes reference to the relationship between value and payment rate, with respect to time of delivery payments: “The commission may adjust the payment rate to reflect the value of every kilowatt hour of electricity generated on a time-of-delivery basis.” (Pub. Util. Code Section 399(d)(2)). The statute specifically directs that the value of locational benefits be considered, and it cannot reasonably be assumed that the Legislature, having required the Commission to consider the value, did not intend the Commission to apply such value in the tariff, at its discretion (“may”). Moreover, failure to do so would contradict SB 32’s stated intent of customer indifference.

F. Deliverability

SCE recommends that full deliverability be a requirement for SB 32 contracts. The Clean Coalition strongly disagrees with this recommendation. Deliverability studies will require an average of 690 days to be completed – the same time it takes for any interconnection customer to obtain an interconnection study under CAISO’s new cluster study process. SCE, CAISO and other utilities generally describe this process as a 420-day process, which is far too long even at this length. However, the cluster study and deliverability study process is even longer in actuality because we must consider

the required waiting periods inherent to cluster study procedures. Interconnection customers will have to wait an average of 240 days (the average of 2-14 months) before the annual cluster study begins (June 1), which is the study process that customers will have to use to obtain the full capacity deliverability study SCE recommends.

Requiring full capacity deliverability for SB 32 projects is unnecessary and extremely burdensome for smaller developers and it will severely setback efforts to bring SB 32 projects online quickly. The Commission should ensure that full capacity deliverability remains as an option for developers, but not a requirement.

Respectfully submitted,

Sahm White

_____/s/_____

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Dated: March 22, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served by electronic service a copy of the foregoing Clean COALITION REPLY COMMENTS ON SB 32 IMPLEMENTATION on all known interested parties of record in R.08-08-009 included on the service list appended to the original document filed with this Commission. Service by first class U.S. mail has also been provided to those who have not provided an email address.

Dated at San Francisco, California, this 22th day of March, 2011.

Sahm White

_____/s/_____

Clean Coalition

VERIFICATION

I am an analyst 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 22nd day of March, 2011, at San Francisco, California.

Sahm White

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