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September 18, 2017

VIA EMAIL

Timothy J. Sullivan
CPUC Energy Division
505 Van Ness Avenue
San Francisco, California 94102

Re: Comments of the California Energy Storage Alliance to Draft Resolution E-4887: Adoption of revised Self-Generation Incentive Program developer definition pursuant to Decision (D.) 16-06-055 and other revisions to the SGIP Handbook

Dear Mr. Sullivan:

In accordance with Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Energy Storage Alliance ("CESA")[1] hereby submits these comments on the draft *Resolution E-4887: Adoption of Revised Self-Generation Incentive*

[1] 8minutenergy Renewables, Able Grid Energy Solutions, Adara Power, Advanced Microgrid Solutions, AES Energy Storage, AltaGas Services, Amber Kinetics, American Honda Motor Company, Inc., Bright Energy Storage Technologies, BrightSource Energy, Brookfield, California Environmental Associates, Consolidated Edison Development, Inc., Customized Energy Solutions, Demand Energy, Doosan GridTech, Eagle Crest Energy Company, East Penn Manufacturing Company, Ecoult, EDF Renewable Energy, ElectrIQ Power, eMotorWerks, Inc., Energport, Energy Storage Systems Inc., GAF, Geli, Green Charge Networks, Greensmith Energy, Gridscape Solutions, Gridtential Energy, Inc., Hitachi Chemical Co., IE Softworks, Innovation Core SEI, Inc. (A Sumitomo Electric Company), Johnson Controls, LG Chem Power, Inc., Lockheed Martin Advanced Energy Storage LLC, LS Power Development, LLC, Magnum CAES, Mercedes-Benz Energy, National Grid, NEC Energy Solutions, Inc., NextEra Energy Resources, NEXTracker, NGK Insulators, Ltd., NICE America Research, NRG Energy, Inc., Ormat Technologies, OutBack Power Technologies, Parker Hannifin Corporation, Qnovo, Recurrent Energy, RES Americas Inc., Sempra Renewables, Sharp Electronics Corporation, SolarCity, Southwest Generation, Sovereign Energy, Stem, STOREME, Inc., Sunrun, Swell Energy, Viridity Energy, Wellhead Electric, and Younicos. The views expressed in these Comments are those of CESA, and do not necessarily reflect the views of all of the individual CESA member companies. (http://storagealliance.org).

Program Developer Definition Pursuant to Decision (D.) 16-06-055 and other revisions to the SGIP Handbook ("Draft Resolution").

I. BACKGROUND AND INTRODUCTION.

The Commission filed Draft Resolution E-4887 to adopt a modified definition of an eligible "developer" in the Self-Generation Incentive Program ("SGIP"). Prior to the proposed changes in the Draft Resolution, the SGIP Handbook defined developers as the corporate entity that holds the contract for purchase and installation of the system, and/or alternative System Ownership Agreement (such as a Power Purchase Agreement) with the host customer and handles the project's development activities.[2] The Draft Resolution proposes to change the definition of an SGIP developer to include the corporate entity that "handles a substantial amount of the project's development activities," even when the entity does not hold the contract with the customer for installation of the energy storage system.[3] The Draft Resolution also proposes to implement an expanded Developer Eligibility Application that seeks information on all development activities handled by a developer.

As the Draft Resolution explains, some energy storage developments involve multiple developers, each of whom plays a significant developer role, yet the current definition only 'counts' the developer holding the contract for purchase and installation of the energy storage system towards the developer's cap.[4] The Draft Resolution implies that, in these cases, the entity holding the customer contract may not always be doing a "substantial" amount of the project's development activities and that the developer's cap as defined may be inaccurate and not serving its intended purpose.

CESA strongly supports the developer's cap as an important safeguard that ensures a broad array of developers can thrive and compete for SGIP funds. This in turn yields storage industry market transformation, a key program goal, with numerous developers gaining industry and project experience. CESA appreciates the Commission's and the Program Administrators' ("PAs") consideration of how to improve the developer's cap definitions and applicability. CESA has seen improvements in the program's structure and administration from the key changes from D.16-06-055, and wishes to continue to see improvements in the program.

In improving the design and rules for the developer's cap, some caution is needed to not unreasonably or inadvertently restrict market development by making program rules overly

[2] SGIP Handbook, Section 4.1.5.

[3] Draft Resolution, p. 2.

[4] *Ibid*, p. 4.

complex, litigious, or unworkable. Additionally, program rules should be clear enough that the PAs, without forensic accounting experts, can reasonably administrate and approve of the program and its projects. Taken to an extreme (for illustrating this point), an overly complex and technical developer's cap definition could make for a problematically lengthy and onerous application process that puts Program Administrators ("PAs") in accounting and investigative roles which may not fit their skill sets and which could create program delays and difficulties in project approvals. Thus, any effort to enhance the developer's cap definition should balance between robust achievement of the developer cap's goals and ease of program use, development, and PA oversight.

Furthermore, CESA believes that it is important to maintain the intent of the Commission's decision to shift from having a manufacturer's cap to a developer's cap, given that the former had proven to be cumbersome to administer, regulate, and verify, creating significant uncertainty for developers. In D.16-06-055, the decision read:[5]

> *We find that the application of a manufacturer cap is cumbersome and increases uncertainty for project developers who have limited insight into a given manufacturer's progress towards a cap. Additionally, this limits customers' ability to choose the specific technology that best meets their needs. We hereby revoke the 40% manufacturer cap. To protect ratepayer interests and ensure diversity, we will instead adopt a developer cap.*

Therefore, CESA recommends that the adopted revised developer cap not conflict with the intent of D.16-06-055 such that it does not create added uncertainty and prove to be challenging administratively.

To support the goal of enhancing the developer's cap while also preserving the ability of parties to use or oversee SGIP in a reasonable manner, CESA offers the following recommendations and clarifications:

- The activities and approach for determining a developer as listed in the Draft Resolution need to be re-considered to increase precision in noting a developer role from other 'project support' roles.

- The determination of "substantial amount" of project development needs to be specified to reduce subjectivity in its interpretation

- The new developer cap should limit inherently retroactive elements

[5] D.16-06-055, p. 39.

- The new developer definition should be applied on a 'going-forward' basis
- The new developer definition should be applied consistently across the PAs
- The Commission's and the PAs should have authority to investigate potential infractions

II. DISCUSSION.

A. The activities and approach for determining a developer as listed in the Draft Resolution need to be re-considered to increase precision in noting a developer role from other 'project support' roles.

The Draft Resolution reasonably lists many activities that can go into an SGIP project lifecycle.[6] However, not all of the activities listed should be considered a "development activity" and thus the definition of development may need to be re-considered, refined, and specified clearly. Any further definition for development activities should also be further outlined in the SGIP Handbook to guide would-be developers on this important category of SGIP rules and participation.

The Draft Resolution proposes to automatically assign this entity as the designated developer for the SGIP project so long as a given entity handles all four of the below activities:[7]

- Approaching or communicating with the target customer about the potential project and learning about its needs and energy profile (Item #1)
- Gaining the customer's commitment to purchase or lease the specified system (Item #4)
- Operating the system, which in the case of energy storage systems primarily means controlling the charge/discharge of the system (Item #9)
- Maintaining the system, including by honoring a service warranty (Item #10)

Although Items #1 and #4 are critical project development activities, CESA disagrees with the Commission's interpretations of Items #9 and #10, which CESA views as post-project development activities that may not be determined until later in the project development cycle.

[6] Draft Resolution, pp. 5-6.

[7] Draft Resolution, p. 7.

For instance, CESA is aware that some companies offer 'storage as a service' and contract with SGIP developers to dispatch the system using proprietary algorithms. It may not be appropriate to categorize such entities as a developer or a party to the project's development.

Similarly, for each of the ten activities listed in the Draft Resolution, it may be helpful to consider whether each activity qualifies as a project development activity. Only true project development activities should be factored into this determination.

B. The determination of "substantial amount" of project development needs to be specified within reason to reduce subjectivity in its interpretation.

The Draft Resolution introduces subjectivity and discretion to the PAs oversight and approval process by not defining what constitutes a "substantial amount" of project development in determining developer status for a project. While the Resolution's intent is clear, CESA feels that further definition of "substantial" is necessary to guide developers, to limit PA discretion and roles as forensic accountants, and to align expectations of all parties so project approvals occur smoothly, quickly, and in a consistent manner. One of the problems with subjective language is that it seems likely to result in disparate application of the rules across the PAs. Potentially, "substantial" could be defined as conducting the majority of the ten listed development activities (*i.e.*, at least 6 out of the 10), but this approach does not capture the value or weight of each of these activities in the project development cycle. For example, many stakeholders may contend that Item #1 or #2 (customer acquisition related activities) should not be given the same weight as Item #7 (submitting SGIP applications), which is more of an administrative task and likely takes less time and constitutes a smaller portion of project development costs. Conversely, there are problems with defining "substantial" based on the percentage of time or total project development costs of each activity. This approach appears to be overly complicated as it may require hourly recording and auditing to calculate the value of each activity, which would be an unacceptable administrative burden. While this approach does not capture the value or weight of each of these activities in the project development cycle, it appears to offer a relatively standardized way of applying the framework, even though it still appears to involve significant subjectivity in how the PAs are to determine which entity is primarily responsible for many of the identified activities.

Furthermore, confusion may also result when a single development activity is conducted by multiple entities, again introducing subjectivity in determining which entity is "significantly" responsible for that given activity. For example, Item #2 (developing the specifications for a system) may involve one entity managing the customer relationship to understand their needs while also consulting their manufacturer on technology specifications and project configurations. In this case, it is unclear which entity would be determined to be "significantly" responsible for that given project activity, leaving the determination of a split in roles to be subject to the PAs'

discretion in ways that the PAs may be poorly positioned to decide. CESA also finds it unlikely that there is an objective basis or clear evidence to determine whether any given entity should be designated as chiefly responsible for a given project activity.

Finally, an overly complex approach may burden well intended developers and actors whose projects may face delays if a sub-developer is unexpected categorized as a chief developer, endangering the project's SGIP status. A rapid resolution process would be needed for these unfortunate cases. While the current SGIP rules for defining a developer is convenient because clear evidence can be provided with a contract with the customer, CESA requests similar clarity in setting new developer definitions and new developer cap designations.

The Commission's 'additive' approach in defining developer status – where the Commission selects a subset of project development activities as those that would add up to a definition of developer status for the party responsible for all those activities – is a good starting point and reflects some real-world energy storage project ownership structures and limits the administrative burdens to the applicant and the PAs by only focusing on the "critical" project development activities. CESA recommends the Commission take this type of approach to the comprehensive list of ten activities and identify the ones that are critical and at the same time easily verifiable. Automatic designation of the developer of a project can be determined on this short-list of project development activities if an entity conducts some majority level of these activities.

C. The new developer cap should limit inherently retroactive elements.

The Draft Resolution proposes to give the PAs or the Commission the ability to retroactively adjust assignment of projects to developers.[8] CESA agrees that some of the development activities may not be known at the time the reservation request is received, which includes the following:

- Securing permits and interconnection permission for the system on behalf of the customer (Item #6)
- Physically constructing/installing the system at the customer's premises (Item #8)
- Operating the system, which in the case of energy storage systems primarily means controlling the charge/discharge of the system (Item #9)
- Maintaining the system, including by honoring a service warranty (Item #10)

[8] Draft Resolution, p. 9.

Many of the above development activities will not be known until the incentive claim stage or after, which introduces retroactive determinations by the PAs to potentially reassign which entity is deemed the developer for a project. CESA finds this problematic as it introduces uncertainty for developers on whether they will secure funding and therefore creates difficulties for project financing, and may lead to significant delays in verifying and auditing developer applications to determine the entities responsible for each development activity before assigning projects to a developer.

Instead, CESA recommends that the Commission adopt a more comprehensive definition for what activities qualify as project development which should avoid a need for retroactive determinations to some degree. As CESA noted before, some of these activities do not fall under project development and should more aptly be designated operation, maintenance, and customer service activities – *e.g.*, Item #9 and #10.

Finally, to reduce uncertainty for applicants and financiers, CESA recommends the Commission adopt a revisions to the developer cap to determine the developer assignment for a project at the time of the incentive reservation request submission, such that the verification of developer status is made during the conditional reservation period. Retroactive adjustments should not be made after the confirmed reservation stage. Otherwise, CESA believes the aforementioned retroactivity issue exists by allowing for re-designation of developer status after the confirmed reservation letter has been issued.

D. The new developer definition should be applied on a 'going-forward' basis.

CESA strongly opposes the retroactive application of newly adopted rules. Many developers who secured Step 1 or 2 funding from SGIP operated under rules stipulated in the SGIP Handbook, and so long as these developers complied with the rules at the time, CESA believes that they should not have their developer status reassigned according to the new rules, which were just revealed in this Draft Resolution on August 25, 2017. While the Commission has the authority to impose penalties for obvious attempts to subvert the program rules, it should not penalize parties that were in compliance with the rules outlined in the SGIP Handbook. For example, developers who secured funding prior to the adoption of the revised SGIP Handbook in accordance with the approval of a Draft Resolution should not be penalized for not disclosing all relationships with other SGIP developers or other entities, so long as there has been no attempt to circumvent program rules to gain a competitive advantage.

Rather, CESA supports the implementation of the new proposed definition and the expanded Developer Eligibility Application on a going-forward basis. Given other changes currently being considered to the program, specifically, the creation of an Equity Budget

beginning in Step 3,[9] CESA suggests that the new framework apply to projects seeking Step 3 funds, with the understanding that the Commission can impose penalties on any attempts to intentionally game this new developer definition and application requirements.

Along those same lines, CESA is aware that some of its member companies are experiencing delays in the approval of their Step 1 and 2 applications. If these delays are caused by the pending decision on this Draft Resolution, CESA believes that these delays are unwarranted as these applications were submitted under the current rules and requirements of the SGIP Handbook. Unless there is evidence of a developer subverting the letter or intent of the current rules and requirements of the SGIP Handbook, CESA recommends that the PAs expeditiously process and approve these pending applications.

E. The new developer definition should be applied consistently across the PAs.

Under current rules, the PAs have the authority to interpret rules and impose sanctions or penalties, but CESA has heard from its members that there is inconsistency in how each PA interprets the rules and procedures. The Commission should ensure consistency among the PAs for interpreting the rules by providing clarity in the rules and providing for an efficient appeals process to ensure developers are treated fairly.

F. CESA supports the Commission's and the PAs' authority to investigate potential infractions.

The Draft Resolution included clarifications on the Commission's authority to investigate developer actions and impose penalties, independent of the PA's existing authority.[10] CESA recognizes and supports the Energy Division's existing authority to investigate obvious attempts by developers to subvert program rules. Given this authority to investigate potential infractions, CESA believes that it is imperative to clarify the developer definition and remove subjectivity in its interpretation to the extent possible so to avoid controversy and potentially costly litigation around the merits of a developer's claim to funds. In addition, CESA suggests that the Commission clarify whether its authority supersedes or complements the PAs' authority to also impose penalties, or how the Commission intends to handle conflicts between PA and its own investigations and/or sanctions and penalties.

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[9] *Proposed Decision Establishing Equity Budget for Self-Generation Incentive Program*, filed on August 25, 2017 in R.12-11-005.

[10] Draft Resolution, pp. 13-14 and SGIP Handbook Section 9.2.1.

III. CONCLUSION.

CESA appreciates the opportunity to submit these comments on the Draft Resolution. CESA aims to ensure the success of SGIP in supporting energy storage projects that provide grid support, reduce GHG emissions, and transforms the energy storage market, and therefore looks forward to working with the Commission on this matter.

Very truly yours,

Donald C. Liddell

DCL/md
cc: R.12-11-005