

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Radiant BMT, LLC

Complainant

v.

Southern California Edison Company (U 338-E)

Defendant.

Case (C.) 17-08-007
(Filed August 8, 2017)

**MOTION FOR LEAVE TO FILE AMICUS BRIEF BY THE CALIFORNIA ENERGY
STORAGE ALLIANCE, CLEAN COALITION, VOTE SOLAR, THE CLIMATE
CENTER, AND SIERRA CLUB**

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October 30, 2020

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In accordance with Rule 11.1(b) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Energy Storage Alliance (“CESA”), Clean Coalition, Vote Solar, The Climate Center, and Sierra Club (“Joint Parties”) hereby submit the *Motion for Leave to File Amicus Brief by the California Energy Storage Alliance, Clean Coalition, Vote Solar, The Climate Center, and Sierra Club* (“Motion”) in response to the Presiding Officer’s Decision Dismissing Complaint (“POD”) and in support of the Appeal submitted by Radiant BMT, LLC (“Radiant” or “Appellant”). CESA is also concurrently filing and serving *Motion for Party Status of the California Energy Storage Alliance* (“Accompanying Motion”) to accompany the Joint Parties’ Motion in accordance with Rule 11.1(b). Pursuant to Rule 1.8(d), CESA has been authorized by Clean Coalition, Vote Solar, The Climate Center, and Sierra Club to sign and file this Motion and the attached *Amicus* Brief on the behalf of the Joint Parties.

I. INTEREST IN FILING PROPOSED AMICUS BRIEF.

CESA is a non-profit membership-based advocacy group committed to advancing the role of energy storage in the electric power sector through policy, education, outreach, and research. CESA's mission is to make energy storage a mainstream energy resource which accelerates the adoption of renewable energy and promotes a more efficient, reliable, affordable, and secure electric power system. As a technology-neutral group that supports all business models for deployment of energy storage, CESA's more than 100 members include technology manufacturers, project developers, systems integrators, consulting firms, and other clean-tech industry leaders. Several of our members participate actively in the Renewable Market Adjusting Tariff ("ReMAT") Program.

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise. The Clean Coalition drives policy innovation to remove barriers to procurement and interconnection of distributed energy resources ("DER") – such as local renewables, demand response, and energy storage – and we establish market mechanisms that realize the full potential of integrating these solutions for optimized economic, environmental, and resilience benefits.

Vote Solar is a 501(c)3 non-profit organization working to remove regulatory barriers and implement policies needed to scale up solar technologies and to make solar power accessible to all.

The Climate Center is a California 501(c)(3) nonprofit organization founded in 2001 with a mission to deliver rapid greenhouse gas ("GHG") reductions at scale, starting in California.

Sierra Club is a non-profit environmental organization with more than 824,000 members nationwide and approximately 169,000 members that live in California, many of whom are ratepayers supporting the ReMAT program. Sierra Club's mission is to promote the responsible

use of the earth's ecosystems and resources; educate and enlist humanity to protect and restore the quality of the natural and human environment; and use all lawful means to carry out these objectives. Sierra Club's environmental concerns encompass a broad range of issues related to pollution that destabilizes the climate and deteriorates California's air quality. Sierra Club is a leader in the effort to end California's dependence on fossil fuels through the equitable decarbonization of the energy supply, including through increased deployment of distributed renewable energy and storage

The Joint Parties' interest in submitting this Motion and attaching our proposed *Amicus* Brief is to highlight how the wrongful dismissal of the Appellant's complaint against Southern California Edison Company ("SCE") would set a problematic precedent for the consideration of energy storage generation paired with other generating technologies. In addition, the Joint Parties agree with the Appellant, which argues the Commission applied a contradictory and incomplete legal analysis in the POD, but we also seek to highlight how the POD is inconsistent with state-level and federal precedent on the treatment of energy storage. The POD's suggestion that batteries do not generate and that energy storage cannot alter a hybrid renewable facility's generating profile is inconsistent with existing federal and state regulatory frameworks and market constructs. Given the Joint Parties' role in representing not only environmental interests but also companies that seek to deploy solar and energy storage on the power grid, the Joint Parties are uniquely positioned to speak to the issues and supplement the record regarding the Appeal. The Joint Parties therefore have a substantial interest in the instant proceeding and respectfully request that this Motion be granted.

II. CONCLUSION.

The Joint Parties appreciate the opportunity to submit this Motion. For the foregoing reasons, we respectfully request that the Commission grant the requested relief and permission to file the accompanying Amicus Brief in support of the Appeal.

Respectfully submitted,



Alex J. Morris
Executive Director
CALIFORNIA ENERGY STORAGE ALLIANCE
On behalf of the Joint Parties

Date: October 30, 2020

Attachment:

**AMICUS BRIEF OF THE CALIFORNIA ENERGY STORAGE
ALLIANCE, CLEAN COALITION, VOTE SOLAR, THE CLIMATE
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**AMICUS BRIEF OF THE CALIFORNIA ENERGY STORAGE ALLIANCE, CLEAN
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III. INTRODUCTION.

On August 8, 2017, Radiant filed a complaint regarding the rejection of several participation requests within SCE’s Renewable Market Adjusting Tariff (“ReMAT”) Program (“Complaint”). In the Complaint, Radiant argued that SCE had wrongfully determined the Project Participation Request (“PPR”) associated with Project 1 to be deficient, eventually rejecting said PPR. Project 1, just as Projects 2, 3, and 4 (collectively, “the Projects”), is a generating facility of 3 MW or less composed of a solar photovoltaic (“PV”) facility enhanced with a lithium-ion battery. Critically, for the Complaint and the POD, the storage component of the Projects allows each project to alter its generation profile. The Projects’ PPRs sought to establish them as part of SCE’s As-Available Non-Peaking (“AANP”) Product Type, noting that more than 5% of the projects output is expected between 10 PM and 6 AM.

SCE’s decision to reject Project 1 largely rested on the argument that its AANP Product Type was not meant to encompass facilities with a solar Resource Type, as it is defined as an “As-Available Facility”¹ with a generation profile demonstrating intermittent energy delivery with less than 95% of the expected output generated between the hours of 6:00 AM to 10:00 PM.² Radiant contested this interpretation in the Complaint, seeking relief by the Commission, arguing that SCE was acting in a manner contrary to the provisions of the ReMAT program, Commission precedent,

¹ An “As-Available Facility” is defined as a generating facility that is powered by one of the following sources, except for a de minimis amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric potential derived from small conduit water distribution facilities that do not have storage capability, or (d) other variable sources of energy that are contingent upon natural forces other than geothermal., See December 6, 2017, *Radiant BMT, LLC and Southern California Edison Company’s (U 338-E) Joint Statement of Undisputed Facts* (“Joint Statement of Facts”) at para 7.

² *Ibid*, at para 6.

and the overarching policy goals of California. After the filing of the Complaint, SCE filed a Motion to Dismiss the Complaint on September 22, 2017. More than three years later, on September 2, 2020, the assigned ALJ issued its decision as the Presiding Officer of this proceeding and granted SCE's 2017 motion to dismiss Radiant's complaint.

As a result, Radiant has once more sought the Commission's relief given the POD's interpretation of the applicable regulation. The POD, Radiant argues, is unlawful and erroneous as it hinges upon a decontextualized "plain meaning" interpretation of the applicable tariff, disregarding Commission precedent and the current policy landscape. The Joint Parties agree with the arguments shared by the Appellant. In this *Amicus* Brief, the Joint Parties support and agree with Radiant's Appeal, as the POD misinterprets the applicable tariff, misconstrues the operation of energy storage, and fails to account for the spirit and intent of the ReMAT program in the context of California's decarbonization efforts. As such, the Joint Parties provide the following arguments in favor of the Appeal:

- The POD errs in its "plain meaning" interpretation as it fails to address the conflated use of "delivered" and "generated", as well as the use of "generation profiles" and "output generated" as a means to certify the moment generation passes the point of common coupling ("PCC").
- The POD errs by ignoring the policy context of California and constraining its determination to a single word within the applicable tariff.

IV. THE POD ERRS IN ITS "PLAIN MEANING" INTERPRETATION.

In its Appeal, Radiant demonstrates that the ReMAT Tariff and the Commission-approved ReMAT PPA³ provide a clear set of eligibility requirements for the AANP Product: (1) qualifying as an "As-Available Facility"; and (2) having a generation profile that demonstrates more than 5%

³ SCE Form 14-934 Renewable Market Adjusting Tariff Power Purchase Agreement ("PPA").

of the *expected output* will be *generated* in the hours between 10:00 PM and 6:00 AM.⁴ Regardless of the fact that eligibility is demonstrated by the compliance with this two-fold requirement, the POD opted to focus on the “plain meaning” of the word “generated.”⁵ With this argumentation, the POD concludes that the presence and meaning of the word “generated” implies that the resource profile, not the generation profile, determines the Product Type.

The Joint Parties find the POD to be erroneous as it does not address the fact that the ReMAT tariff uses the terms “delivery” and “generation” interchangeably. As the Appellant points out, Finding of Fact 11 in Decision (“D.”) 12-05-035 describes AANP projects as providing non-firm “energy *deliveries* during non-peak hours.”⁶ As it can be seen in this usage of the term “delivery”, the Commission’s intent with D.12-05-035 was to identify generation and delivery as interchangeable when considering a single, integrated ReMAT-eligible facility. In the Joint Parties’ experience, generation and delivery are only different when describing a location, not a point in time; electricity may be generated in one location and delivered to another. When the point of receipt and the point of interconnection are the same, generation and delivery are interchangeable.

This argument is furthered by the fact that the ReMAT tariff expressly requires generating facilities seeking participation to provide a generation profile that demonstrates a fraction of the *expected output* that will be generated during a particular period. In this context, the usage of the term “output” denotes that the emphasis is placed on the moment the electrical energy provided by the As-Available Facility passes the PCC to the grid, not the moment when renewable energy (in whatever form it takes) is as-available to the Project. Otherwise, it would be the Resource Type

⁴ See SCE Schedule ReMAT Section N.4. Emphasis added.

⁵ POD at 12.

⁶ See D.12-05-035 Attachment A at FOF 11.

(expected “input”), not the Generation Profile (expected output), that determines the Product Type. This consideration shows that, in this case, the delivery of electrical energy is used as a proxy to generation, furthering an interchangeable interpretation of both terms. As such, it is erroneous to interpret the ReMAT tariff as the ALJ has done within the POD.

V. **THE POD ERRS BY IGNORING THE POLICY CONTEXT AND PRECEDENTS ESTABLISHED IN CALIFORNIA AND FEDERALLY.**

An essential limitation of the POD’s argumentation rests on the fact that the Commission in its analysis fails to take into account the policy objectives of the ReMAT program and the broader policy context of California. In the POD, the Commission states that it does not “make industry changes or new regulations in a complaint proceeding”.⁷ This statement disregards the fact that the ReMAT program has already been established with stated goals to stimulate innovation like the integration of new generating technologies and configurations. In this sense, asserting the eligibility of assets akin to Radiant’s Projects would not constitute the establishment of industry changes or new regulations, but the acknowledgement that the ReMAT program’s express purpose is to further the development of innovative and clean distributed generation across the state.

Furthermore, in the POD, the Commission states it cannot “force an interpretation of the existing and Commission-approved ReMAT tariff on SCE that is contrary to the plain language of the tariff”⁸. However, the Appeal presents a lengthy list of definitions and precedents established by a number of state regulatory agencies, which underscores the significant amount of precedent that the POD would be contravening. To add the list, the Joint Parties note that Order No. 845 modified the definition of a “generating facility” in Federal Energy Regulatory Commission

⁷ *Ibid* at 15.

(“FERC”) *pro forma* Large Generator Interconnection Procedures (“LGIP”) and *pro forma* Large Generator Interconnection Agreement (“LGIA”), which affirmed a previous determination made for small generating facilities.⁹ Despite the load characteristics of some energy storage facilities that charge from the grid, FERC affirmed the treatment of energy storage as generating facilities for the purposes of interconnection.¹⁰ Contrary to the Commission’s determination in the POD, FERC has already determined that energy storage, whether configured as a standalone facility or a paired facility, should be treated as a generating facility. Moreover, as referenced in the Appeal,¹¹ the determination in the POD is inconsistent with the California Energy Commission (“CEC”) Renewable Portfolio Standard (“RPS”) Eligibility Handbook, where renewable energy credits (“RECs”) from an “eligible renewable facility” are not based on the production of direct-current electricity when the sun hits the panels (an intermediary step in the generation process) (in line with the POD) but instead on the net exports onto the grid after accounting for storage roundtrip efficiency losses.¹² As such, according to the broader context of policies and regulations in California, the value of renewable generation is not in the generation itself¹³ but in the generation “exported” to the grid across the PCC, where storage provides an enhanced benefit of delivering that generation at times of most value.

Finally, the determination that storage is not generation has broader implications that could have ripple effects as a harmful precedent. As discussed above, it could materially disrupt REC accounting where inconsistent rules are applied for hybrid generating facilities as compared to

⁹ Order No. 845, 163 FERC ¶ 61,043 at P 275.

¹⁰ *Ibid* at P 285.

¹¹ Appeal at 11.

¹² RPS Eligibility Guidebook, Ninth Edition Revised at 41 (Footnote 35).

¹³ If so, RECs would be generated based on the gross renewable generation regardless of storage roundtrip efficiency losses or net output delivery to the grid.

other RPS-eligible generation while encroaching on the CEC’s jurisdiction to shape these rules and regulations. Additionally, energy storage is playing an increasingly important role in providing new Resource Adequacy (“RA”) capacity to the grid, with the Commission issuing D. 20-06-031 in R.19-11-019 that established a supply-side generating capacity value for hybrid solar and energy storage based on the generation profile of the combined resource.¹⁴ By determining that energy storage is not a “generating resource” by virtue of receiving electricity from another generating system, the POD contradicts the Commission’s policies on how energy storage provides RA capacity. Across the board, including as identified in the Appeal, the Joint Parties see the POD’s treatment of energy storage as a component of renewable facilities as being contrary to the determinations and policies made at FERC and the Commission itself. As a result, the Joint Parties urge the Commission to reconsider the POD and grant the Appeal.

VI. CONCLUSION.

The Joint Parties appreciate the opportunity to submit this *Amicus* Brief and respectfully requests that the Commission consider the arguments made herein to supplement the record and approve the Appeal. If the POD is left to stand, the Joint Parties are concerned that the Commission will be setting a harmful precedent for California’s energy storage market and contravene the state’s decarbonization and policy goals.

Respectfully submitted,



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On behalf of the Joint Parties

Date: October 30, 2020

¹⁴ D.20-06-031 at 30.