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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 11-05-005 (Filed May 5, 2011)**

PETITION FOR MODIFICATION OF D.13-05-034 OF ALLCO RENEWABLE ENERGY LIMITED

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October 22, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to	**)**	
Continue Implementation and	**)**	**Rulemaking 11-05-005**
Administration of California Renewables	**)**	**(Filed May 5, 2011)**
Portfolio Standard Program	**)**	

PETITION FOR MODIFICATION OF D.13-05-034 OF ALLCO RENEWABLE ENERGY LIMITED

Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure, Allco Renewable Energy Limited ("Allco") submits this petition for modification of D.13-05-034 (the Decision"). The Decision makes changes to the existing feed-in tariff ("FIT') program required by Public Utilities Code Section 399.20 (the "Section 399.20 FIT"). The Decision adds certain restrictions that are contrary to the plain meaning of Public Utilities Code Section 399.20, and violate Public Utilities Code Section 453(a) [1].

I. THE IMPLEMENTATION OF A BI-MONTHLY AND A TYPE OF ENERGY LIMIT IS CONTRARY TO THE PLAIN MEANING OF SECTION 399.20 THAT THE AVAILABLE CAPACITY IS AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS.

"Settled principles of statutory construction mandate that the statute's plain meaning controls [its] interpretation unless its words are ambiguous." *Elk Hills Power, LLC v. Board of Equalization*, 57 Cal. 4th 593, 609-610 (2013)(internal citations and quotations omitted.) The California Supreme Court has explained that it will "consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." *Curle v.*

[1] All section references herein are to the California Public Utilities Code unless otherwise noted.

Superior Court, 24 Cal.4th 1057, 1063 (2001). "[W]henever possible, significance must be given to every word [in a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage." *Agnew v. State Bd. of Equalization,* 21 Cal.4th 310, 330 (1999).

Section 399.20(f) provides that each investor owned utility ("IOU") shall make the Section 399.20 FIT "available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts."

Instead of following the first-come first-served statutory mandate set forth in Section 399.20, the Decision creates two impermissible limitations on the availability of the first-come, first-served basis. First, it divides each IOU's allocation into different buckets—baseload, peaking or non-peaking. Second, it further divides the allocation for each bucket into bi-monthly periods in which a maximum of 5 megawatts ("MW") of projects could participate. In doing so, as explained below, the Decision not only impermissibly contradicts the plain meaning of the statute, but impermissibly amends Section 399.20(n), and renders mere surplusage, the provisions of Section 399.20(f)(2)(A) and (D).

A. THE DECISION CONTRADICTS THE COMMISSION'S PREVIOUS INTERPRETATION OF FIRST-COME, FIRST-SERVED.

The first-come, first-served language of Section 399.20 was not changed by the 2008/2011 amendments to Section 399.20. Yet the Decision has abandoned the plain meaning of that language. That language was interpreted in D.07-07-027 to mean what it says. Instead of continuing adherence to the plain meaning, in an attempt to force an opportunity for adjustment to the FIT prices, the Decision has determined that, for purposes of the Re-MAT program, the

language no longer was as clear as it has been since 2007. *Compare*, D.07-07-027, at p. 11 (stating "we agree with respondents that the law is clear: the offer is on a first-come-first-served basis.") with D.13-05-034 at p.19 (stating "we find that the first-come, first served program requirement does not mean that the IOU must accept a request for a contract even if sufficient megawatts remain in a product type for the bi-monthly program period."). The Decision's new finding reverses the Commission's long-standing interpretation, and as discussed below, is inconsistent with judicial interpretation as well as other provisions of California law that use the first-come, first-served standard.

B. THE DECISION CONTRADICTS PRIOR JUDICIAL INTERPRETATION OF FIRST-COME, FIRST-SERVED.

The history of the first-come, first-served concept as a notion in the law has a long history in California and other Western states stemming primarily from water usage. In the early English common law the "first come, first served" concept was a relatively simple approach to water usage. The first taker of the water was entitled to the water. The "first come, first served" concept became firmly imbedded in a doctrine of "prior appropriation" in many western states, such as California. *See, e.g., In re Water of Hallett Creek Stream Sys*., 44 Cal. 3d 448, 462 (1988) (stating "[a]lmost simultaneously with California's admission to the Union, there occurred an event of nearly equal significance -- the discovery of gold. As miners and settlers streamed into California, they took what water they needed to work their mines and farms by diverting it from the natural watercourses. From this process arose the local priority rule of "first in time, first in right," or "prior appropriation.")

California courts have consistently interpreted first-come first-served as meaning exactly what it says. *See, e.g., Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 436; 150 P.3d 709, 723; 53 Cal. Rptr. 3d 821,838 ("capacity would

simply be available to users on a 'first-come, first-served' basis."); *Donovan v. Rrl Corp*., 26 Cal. 4th 261, 272 (2001)("a merchant's advertisement that listed particular goods at a specific price and included the phrase 'First Come First Served' was deemed to be an offer, because it constituted a promise to sell to a customer at that price in exchange for the customer's act of arriving at the store at a particular time."); *Godinez v. Schwarzenegger*, 132 Cal. App. 4th 73, 83 (2005) ("allocation of new school construction funds under Proposition 1A, apportioning funds on a "first-come-first-served" basis"); *Walton v. Eu,* 143 Cal App 3d 403 (1983)(Secretary of State distributed all the funds to claimants on a first come-first served basis). *Santa Catalina Island Conservancy v. County of Los Angeles*, 126 Cal App 3d 221 (1981)("during periods of high demand, participants were selected by lot or on a "first come" basis.");[2] *Lexin v. Superior Court of San Diego*, 47 Cal. 4th 1050, 1088; 222 P.3d 214, 239; 103 Cal. Rptr. 3d 767, 797 115 (2010)("What matters is not the breadth of the actual recipient class, but that the service has not been intentionally designed to limit that class and is broadly available to all those potentially within it. Reclaimed water sold to any wholesaler who chooses to buy it, advertising space made available to any business that chooses to purchase it, hangar space any citizen-pilot may rent on a first-come, first-served basis—all these are public services generally provided and may be offered to public officials as well without violating the conflict of interest laws.").

The first-come, first served concept in Section 399.20, means exactly what is says. The electrical corporation must enter into contracts at the then designated market price to all that apply up to its proportionate allocation of the 750MWs. The Decision's modification of the first-come, first-served language of the statute is contrary to the plain meaning of the statute and inconsistent judicial interpretation of the concept.

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[2] It should be noted that first-come, first-served was distinguished from selection by lottery.

C. THE DECISION CONTRADICTS HOW FIRST-COME, FIRST-SERVED IS USED IN OTHER CALIFORNIA STATUTES.

Other California statutes use the term first-come first-served in accordance with its plain meaning. *See, e.g.,* Cal. Bus. & Prof. Code §11234(b)(5)(C) ("The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come-first-served basis."); Cal. Ed. Code §12001.6(c)(6) ("Applications meeting the conditions set forth in paragraphs (1) and (4) shall be accepted on a first-come-first-served basis by date of postmark."); Cal. Gov. Code §14529.6(c) ("The loan program created under this section shall automatically commence on a first-come, first-served basis."); Cal. Health & Saf. Code §40720(g)(1) ("Provide appointments on a first-come-first-served basis."); Cal. Health & Saf. Code §50801.5(b) ("shelter and services will be provided on a first-come-first-served basis."); Cal. Pub. Utils. Code §399.32(e) ("A local publicly owned electric utility that sells electricity at retail to 75,000 or more customers shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the utility, upon request, on a first-come-first-served basis, until the utility meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 399.20.")[3]; Cal. Pub. Utils. Code §2827(c) (1) ("Every electric utility shall develop a standard contract or tariff providing for net energy metering, and shall make this standard contract or tariff available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer-generators exceeds 5 percent of the electric utility's aggregate

[3] The Commission's application of first-come, first-served could now be used, for example, by publicly owned utilities to stretch out their obligations under Section 399.32 virtually without limit.

customer peak demand."); Cal. Pub. Utils. Code §2827.10(b)(1) ("Every electrical corporation, not later than March 1, 2004, shall file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Subject to the limitation in subdivision (f), every electrical corporation shall make this tariff available to eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity of the eligible fuel cell electrical generating facilities receiving service pursuant to the tariff reaches a level equal to its proportionate share of a statewide limitation of 500 megawatts cumulative rated generation capacity served under this section."); Cal. Rev. & Tax Code §17053.85(g)(1)(D) ("Process and approve, or reject, all applications on a first-come-first-served basis."); Cal. Rev. & Tax Code §17059(e)(1) ("Upon receipt of the certification from the seller, as described in paragraph (2) of subdivision (b), the Franchise Tax Board shall allocate the credit to the taxpayer on a first-come, first-served basis."); Cal. Rev. & Tax Code §18755.2(c)(2) ("Process and approve, or reject all applications on a first-come-first-served basis."); Cal. Rev. & Tax Code §23685(g)(1)(D) ("Process and approve, or reject, all applications on a first-come-first-served basis.")

The Commission's application of the "first-come, first-served" mandate is contrary to the plain meaning of the statute and contradicts every other application of the first-served concept in California statutes.

D. AN IOU'S DECISION TO DENY A TARIFF APPLICATION BASED UPON EITHER THE BI-MONTHLY OR TYPE OF ENERGY LIMIT WOULD VIOLATE SECTION 399.20(N).

Section 399.20(f)(1) provides that the tariff must be made available "upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6." The statute is plain on its face.

Section 399.20 specifically restricts the bases on which an IOU may reject an application for a power purchase agreement ("PPA") under the Section 399.20 tariff. Those bases are set forth in Section 399.20(n). Except for the other factors in Section 399.20(n) which are not relevant here, the statute on its face plainly states that an IOU could only reject the an applicant's tariff request if the facility did not meet the requirements of a Section 399.20(b), which do not contain any restriction on the type of energy produced or a further limitation based upon bi-monthly periods. As a result, an IOU would have no basis on which to reject an applicant's tariff request on the basis of either limitation.

E. When the Legislature intended to create allocations it did so. restricting the capacity to certain types of resources is contrary to the plain meaning of Section 399.20.

The statewide mandate under Section 399.20 is based upon an overall requirement that a certain amount of renewable energy be obtained, and not that a certain portion be from baseload, peaking or non-peaking. Section 399.20(d)(2)(C), however, allows the Commission to provide for a different *price* based upon the "value of different electricity products including baseload, peaking, and as-available electricity."

Section 399.20(d)(2)(C) does not, and cannot be read, to contradict the first-come, first-served basis of Section 399.20(f) or the limited bases to deny a tariff request set forth in Section 399.20(n). Implementation of different pricing based upon the value of different electricity products including baseload, peaking, and as-available electricity can still easily be achieved without contradicting the plain meaning of first-come, first served command of Section 399.20(f) and the provisions of Section 399.20(n).

In D. 12-05-035 the Commission acknowledged that "in the absence of any specific legislative directive, a Commission requirement that pricing be distinguished based on

technology-specific basis would interfere with the application of the statutory provisions requiring first-come-first-served." The Commission nevertheless took the view, which is implemented in the Decision, that the statute "allows for first-come-first-served on a product specific basis because the statute specifically directs the Commission to consider the value of different electricity products including baseload, peaking as-available, and non-peaking as-available electricity." The plain meaning of the statute allows for a *pricing* differential not a *capacity or volume* differential. In addition the "product-type" label vs. a "technology-specific" label" is, in practical terms, a distinction without a difference.[4] The subscriptions under the CREST and E-SRG tariffs were almost entirely solar—peaking as available, of which the Legislature was presumably aware.

When the Legislature intended to create allocations, it specifically did so. Section 399.20(f)(2) provides specific allocations for bioenergy projects and provides specific rules for the allocation of the 250 megawatts identified in Section 399.20(f)(2). For example, biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion, is allocated 110 megawatts. For dairy and other agricultural bioenergy, the allocation is 90 megawatts, and for bioenergy using byproducts of sustainable forest management, the allocation is 50 megawatts. Moreover, in the case of the 250 megawatts under Section 399.20(f), the Legislature gave the Commission the authority to reallocate the 250 megawatts among the different bioenergy categories. No such legislative authority was given to the Commission for

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[4] *See, also*, D.12-05-035 at p. 81 stating: "The Re-MAT pricing mechanism could benefit bioenergy, biogas, forest biomass, and the other technologies because it allows renewable resources to compete against other similarly-valued renewable resources, rather than the entire renewable market." Clearly the Commission recognized the "product" type categorization had the practical effect of a technology type categorization.

the 750 megawatts required by Section 399.20(f)(1). If the Commission had the authority to reallocate the 750 megawatts as it has done, it would render the specific authority given under Section 399.20(f)(2) mere surplusage, which would be contrary to the canons of statutory construction used by the California Supreme Court.[5]

The Commission has set the price under the Section 399.20 FIT. Once that price is set, Section 399.20(f) requires that an IOU's full allocation of the 750MW be available on a first-come, first-served basis. If after a bi-monthly period (or some other period) of subscriptions there still remained any capacity, then a pricing adjustment mechanism (upward or downward) could easily be implemented based upon the level of each product type that had subscribed.[6] Alternatively, a pricing adjustment could be based on other factors, such as the results of ongoing RAM solicitations, which was used as the basis for the initial Re-MAT price.

The Commission's use of the RAM results to set the initial Re-MAT price clearly establishes that it is not necessary to ignore the plain statutory language in order to set a market price similar to the MPR. The Commission should modify the Decision to eliminate the

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[5] The Legislature has also provided the Commission the authority to "modify or adjust" the requirements of Section 399.20 in the case of any electrical corporation with less than 100,000 service connections. Neither Pacific Gas and Electric Company ("PG&E") nor Southern California Edison Company ("SCE") fit that requirement, and as a result, the Commission has no such statutory authority in the case of the obligations of PG&E and SCE.

[6] The legislative history of SB2 X1 supports that conclusion. *See, e.g.*, ASSEMBLY COMMITTEE ON NATURAL RESOURCES, Bill Analysis http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110304_145825_asm_comm.html:

> "13) Amends existing "feed-in tariff" statute for small renewable generators, which relies on the RPS MPR for pricing, to account for this bill's repeal of the MPR, by requiring the PUC to set a *similar market price* specifically for purposes of the feed-in tariff statute." (emphasis added.)
>
> The Assembly Committee on Natural Resources explanation of SB2 X1 as notes:"This bill is nearly identical to the final version of SB 722 (Simitian), which passed the Assembly in the final hour of the 2009-2010 session, but was held in the Senate for lack of a vote before the session adjourned at midnight."

restrictions imposed upon the availability of the Section 399.20 FIT by (i) the bi-monthly limit on the availability of the Section 399.20 FIT, and (ii) the separate capacity limitations based upon the type of generator.

II. REDUCING ALLOCATIONS FOR SCE AND PG&E BY THE AMOUNT OF PPAS ISSUED UNDER THE NON-SECTION 399.20 FEED-IN TARIFF AUTHORIZED UNDER D.07-07-035 HAS NO LEGAL BASIS.

AB 1969 added Section 399.20 to the California Public Utilities Code.[7] The law required that California electrical corporations make available a tariff only to public water or wastewater agencies that own and operate certain electric generation facilities powered by renewable resources.[8] On July 27, 2007, the Commission issued D. 07-07-027 regarding the implementation Section 399.20, requiring that electrical corporations make available tariffs and standard contracts for the purchase of electricity from public water and wastewater customers. D.07-07-027 also adopted an additional program for only PG&E and SCE, based upon similar terms and conditions as the Section 399.20 program for entities that were not water/wastewater agencies.[9] The Commission specified that the expanded program was "separate and distinct" from the program applicable to public water and wastewater agencies required by Section 399.20.[10]

See, D.07-07-027 at 43 stating

> We adopt a limited expansion of this basic tariff/standard contract program from water/wastewater customers to other customers. We do this today for only two utilities: SCE and PG&E. We also limit the expanded availability to

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[7] AB 1969 (Yee) Stats. 2006, Ch. 731.

[8] Cal. Pub. Utils. Code §399.20(e)(2006).

[9] D.07-07-027 at 61.

[10] *Id*. at 43.

> the same basic terms adopted above for water and wastewater customers (e.g., 1.5 MW or less per project; allocation of 123,884 kW for SCE and 104,603 kW for PG&E, for a combined total of 228,487 kW).
>
> The expanded availability is separate and distinct from the program to implement § 399.20. Therefore, the tariffs/standard contracts should also be separate and distinct.

Consistent with the direction that each program is "separate and distinct," D.07-07-027 established distinct capacities and limits for each program[11], and ordered that electrical corporations file: (1) tariffs and standard contracts for the purchase of electricity from water and wastewater customers;[12] and (2) in the case of PG&E and SCE only, similar tariffs for the purchase of electricity from entities other than public water and wastewater agencies.[13]

In compliance with D.07-07-027, PG&E submitted Advice Letters 3098-E and 3100-E establishing (1) tariffs and standard contracts for the purchase of electricity from public water and wastewater customers ("E-PWF"); and (2) tariffs and standard contracts for the purchase of electricity from customers who are not a public water or wastewater agency ("E-SRG"). CPUC Resolution E-4137 approved the respective tariffs with certain modifications.[14] In Advice Letters E-3098-E-A and E-3100-E-A, PG&E filed the final versions of the E-PWF tariff and the E-SRG tariff, respectively, and the related standard contracts. The E-SRG tariff is entitled "SCHEDULE E—SRG-SMALL RENEWABLE GENERATOR PPA." In contrast the E-PWF tariff is entitled "SCHEDULE E—PWF-SECTION 399.20 PPA." Similarly the standard contract

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[11] *Id*. at 58.

[12] D. 07-07-027 at 62.

[13] D. 07-07-027 at 62.

[14] The CPUC approved PG&E's Advice Letter 3100-E-A and 3098-E-A implementing changes required by Resolution E-4137 on February 20, 2008.

under the E-SRG tariff is labeled "SMALL RENEWABLE GENERATOR POWER PURCHASE AGREEMENT". In contrast, the standard contract under the E-PWF tariff is labeled "SECTION 399.20 POWER PURCHASE AGREEMENT".

Similarly, SCE established its CREST tariff for the separate program mandated by D. 07-07-027, and its WATER tariff as the Section 399.20 compliant tariff.

PG&E's E-SRG tariff was not a Section 399.20 tariff. It is only the E-PWF tariff that relates to Section 399.20. Similarly, the SCE CREST tariff was not a Section 399.20 tariff. It was only the WATER tariff that related to Section 399.20.

Each of SCE's and PG&E's allocation under the Re-MAT program has been reduced by the capacity for projects that have already entered into PPAs under the non-section 399.20 FIT authorized in D.07-07-035.

By reducing the allocations for SCE and PG&E by the non-Section 399.20 FIT, the Commission has implemented an FIT under Section 399.20 at substantially less than the 750MW required by the Legislature.

D.07-07-035, and most recently Resolution E-4593, confirms that SCE's CREST and PG&E's E-SRG were not tariffs that were implemented under Section 399.20. There is therefore no legal basis on which to conclude that a PPA issued under the CREST and the E-SRG should reduce the mandated 750MW of Section 399.20.

The only PPAs that can properly be considered to reduce SCE's and PG&E's allocation are those entered into under SCE's WATER tariff, in the case of SCE, and under the E-PWF tariff, in the case of PG&E.

The Decision, however, effectively retroactively, and without explanation, reclassifies the non-Section 399.20 tariff as part of Section 399.20 without any legal basis to do so.[15] For that reason, it is contrary to the plain meaning of the statute, and is arbitrary and capricious and an abuse of discretion.

III. RESTRICTING INDEPENDENT FACILITIES FROM BEING ELIGIBLE FOR THE RE-MAT BECAUSE OF SEPARATE INDEPENDENT PROJECTS WITHIN A VAGUE GEOGRAPHICAL AREA IS CONTRARY TO SECTION 399.20(N) AND VIOLATES SECTION 453.

Section 453(a) provides that:

> No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

Section 399.20(b) provides that any electric generation facility that is eligible renewable energy resource, strategically located within the service territory of, and developed to sell electricity to, an electrical corporation that has "an effective capacity of not more than three megawatts [and is] interconnected and operates in parallel with the electrical transmission and distribution grid" is eligible for a PPA (i.e., service) under the Section 399.20 tariff.

Instead of looking at each facility that is separately interconnected and built as a separate facility as, in fact, a separate electric generation facility, the Decision creates a vague concept that provides that the size of a facility for purposes of Section 399.20(b)(1) will not be determined by the size of the facility itself, but by its size and the size of certain other facilities in the same "general location". The standard contracts of the IOUs provide:

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[15] The Commission's approach raises collateral issues regarding the implementation of the non-Section 399.20 and Section 399.20 tariffs. By counting what was a PPA entered into under a non-Section 399.20 tariff as one entered into under a Section 399.20 tariff, the Commission has also retroactively eliminated in the WATER and E-PWF tariff sheets, the water/wastewater agency requirement that was eliminated effective January 1, 2009, by SB 380 but never reflected in changed tariff sheets to the WATER and E-PWF tariffs.

> Daisy Chaining: The Applicant must provide to [IOU] an attestation that the Project is the only exporting project being developed, owned or controlled by the Applicant on any single or contiguous pieces of property. [IOU] may, at its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of a larger installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates.

First, the "daisy chaining" provision contradicts the plain language of Section 399.20(n) that an IOU may only deny a tariff request for specific reasons. A 3MW or smaller facility, whether or not it sits next to or within the same general location of another 3MW or smaller facility is still a 3MW independent electric generation facility within the meaning of Section 399.20(b)(1)[16].

Second, the Commission has improperly delegated to the IOUs the ability to "in their sole discretion" to make a determination under Section 399.20 that would deny an applicant the right to the Section 399.20 tariff. In addition, that delegation is essentially standard-less. There is no statutory basis to provide that authority to the IOUs.

Third, the notion of a project within the same general location is vague at best and has nothing to do with whether the specific electric generation facility is 3MW or less within the meaning of Section 399.20(b)(1).

Fourth, the daisy-chaining provision improperly discriminates against specific individuals or entities, i.e., the developer that owns the project in the same "general location". If a 3.0MW or smaller project is its own independent technical facility, with separate equipment, separate access roads, separate interconnection facilities and separate everything else, there is no

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[16] The Commission's new requirement that a project's network upgrades must not exceed $300,000 in order to be considered "strategically located" may substantially eliminate whatever perceived issue the "daisy-chaining" provision was intended to address.

basis on which to single out and target that project owner (or some undefined "consortium")[17] from developing either at the same time, or at some time in the future, other projects in the same general location.[18]

The Decision's daisy-chaining factor is not included in the statute and it is not a permissible interpretation of the statute. The daisy-chaining provision also results in discriminatory treatment solely against the developer (or some undefined consortium) of the neighboring project when the developer of both projects is the same because the developer is being treated differently than any other person that would want to develop a project on an adjoining piece of land or in the same "general location". Such a test, targeting only the developer of the neighboring project improperly discriminates in violation of Section 453(a) by subjecting such developer to a "prejudice or disadvantage" in obtaining service under the Section 399.20 tariff.

IV. CONCLUSION.

For the reasons stated above, Allco petitions the Commission to modify D. 13-05-034 to (1) delete the bi-monthly limitation, (2) remove the capacity allocation to different types of energy, (3) not reduce the IOUs allocation by PPAs entered into under non-Section 399.20 tariffs, and (4) remove the daisy-chaining provision.

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[17] *See*, Joint Motion for Clarification filed by PG&E, SCE and SDG&E on October 17, 2013 (the "IOUs Joint Motion), at p.2.

[18] As the IOUs Joint Motion illustrates, the daisy-chaining provision clearly violates Section 399.20(n) and Section 453, and does not even relate to the 3.0MW requirement of Section 399.20(b)(1). Any denial of service under the tariff in the circumstances described in the IOUs Joint Motion would be a clear violation of Section 399.20(b)(1), Section 399.20(n) and Section 453.

Respectfully submitted,

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October 22, 2013

VERIFICATION

I, Thomas Melone, am the President of Allco Renewable Energy Limited and am authorized to make this verification on its behalf. I have read the foregoing *PETITION FOR MODIFICATION OF D.13-05-034 OF ALLCO RENEWABLE ENERGY LIMITED*. The statements in the foregoing document are true based upon my knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of October 2013 at New York, NY.

/s/ *Thomas Melone*
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