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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 10-05-004 (Filed May 6, 2010)

PETITION OF CLEAREDGE POWER, INC. AND BLOOM ENERGY CORPORATION TO MODIFY DECISION D.11-07-031 EXPANDING THE TYPES OF CUSTOMERS ELIGIBLE FOR VIRTUAL NET METERING

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July 20, 2012

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Pursuant to Rule 16.4 of the California Public Utilities Commission ("CPUC" or "Commission") Rules of Practice and Procedure, ClearEdge Power, Inc. and Bloom Energy Corporation ("Petitioners") respectfully submit this Petition for Modification of D.11-07-031 ("Petition") expanding the types of customers eligible for virtual net metering (VNM).

I. INTRODUCTION

Decision 11-07-031 and subsequent Resolution E-4481 addressed a key issue of importance in furthering the wide-spread deployment of distributed generation (DG) by expanding net metering (NEM) to a wider customer base by authorizing the use of VNM. VNM offers customers who might otherwise not be able to participate in DG programs the opportunity to do so. By allowing for a wider variety of customer scenarios, be it a single customer site or a single site with multiple meters and customers, such as a multitenant building, – and by including more DG technologies – the Decision and Resolution broke down long standing barriers to DG. However, the Decision failed to address one key element – the expansion of VNM to include ALL net metering eligible technologies. It is here Bloom and ClearEdge seek modification.

II. PROCEDURAL BACKGROUND

The Commission initiated a new Order Instituting Rulemaking ("OIR") for the California Solar Initiative, Self-Generation Incentive Program, and other Distributed Generation issues in May, 2010 (Rulemaking 10-05-004). A subsequent ruling was issued by the Administrative Law Judge containing recommendations for modifications to the California Solar Initiative Program from the Energy Division staff. In July 2011, the Commission adopted D.11-07-031 which modified the CSI Program based on the Energy Division Staff recommendations. One of the modifications covered the expansion of VNM to all multi-tenant customers. VNM was first established as part of the Multifamily Affordable Solar Housing (MASH) Program in D.08-10-036 and allows customers to allocate the kilowatt-hour credits from the electricity generated from a single solar energy system on an affordable housing property to multiple customer accounts within that property. D.11-07-031 further expanded VNM eligibility to include additional types of customers and generation technologies, explicitly including fuel cells. The decision directed the utilities to file Tier 2 advice letters "containing modifications to their net metering tariffs to allow VNM to apply to all multi-tenant and multi-meter properties" within 60 days of the Decision.

On December 8, 2011 Energy Division staff held a workshop to vet various issues raised in protests to the filed Advice Letters and also to consider needed modifications due to the passage of Senate Bill 489 (Chapter 589, Statutes of 2011). Senate Bill 489 expanded eligibility for net metering to all eligible renewable energy resources[1], not just wind and solar resources as was previously the case. Eligibility of fuel cell customer generators for VNM was raised in the workshop and participants requested clarification of the impact of Senate Bill 489.

[1] As defined in Public Utilities Code § 399.12

Draft Resolution E-4481, issued April 25, 2012, addressed the issues raised in the protests to the Advice Letters and the Workshop, including the expansion of technologies eligible for VNM. The Petitioners filed comments on the Draft Resolution E-4481 requesting that the eligible technologies not be limited to only those receiving the full retail net metering credit, but consistent with SB 489 should include all distributed generation technologies that meet the definition of "ultra-clean and low-emission distributed generation". The Petitioners were advised by staff that because the underlying Decision stated that the "expanded VNM concept can apply to any DG technology that receives a ***full retail rate credit under net energy metering***" [emphasis added] the Resolution could not authorize VNM for technologies that did not receive such credit. Hence, the Petitioners seek modification of the underlying Decision.

III. DISCUSSION

Net metering is governed by two similar statutory sections. Public Utilities Code § 2827 governs "full retail" net metering. Public Utilities Code § 2827.10 governs "generation only" or "gen to gen" net metering for fuel cells not fueled by a renewable fuel. It is these two statutes the Resolution should rely upon to determine eligible technologies and incorrectly limits VNM to just those technologies described in Public Utilities Code Section § 2827. This clearly circumvents the true intent of the statute – to allow for as broad an application of net metering as possible. This was made evident by the recent passage of Senate Bill 489. Senate Bill 489 addresses both fuel cell net metering and renewable technologies net metering. Both renewable and non-renewable technologies were included in the list of energy technologies whose widespread adoption is encouraged in order to help meet California's energy goals: "...stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help

stabilize California's energy supply infrastructure, enhance the continued diversification of the California energy resource mix, reduce interconnection and administrative costs and encourage conservation and efficiency"[2]. The Decision – and subsequent Resolution – relies on the differentiation of "full retail" versus "generation only" as the measure of eligibility, and no such differentiation is made regarding eligibility for net metering in Senate Bill 489. The Legislature saw fit to extend net metering to essentially ALL generating technologies, specifically including non-renewable fuel cell technologies that the Commission has determined will achieve reductions in emissions of greenhouse gases and meets emissions requirement for eligibility for funding pursuant to the self-generation incentive program (SB 489, Section 4, (a)(3)(C)). While it is true that "full retail" net metering was reserved for renewable technologies, there is no statutory requirement in the bill that should serve to exclude eligible technologies from virtual net metering at the allowed generation only rate.

The test for VNM should be eligibility for net energy metering as defined. The credit to be applied is simply a matter of determining the monetary value to be credited per kWh on a customer's bill and should not influence eligibility for virtual net metering. As such D.11-07-031 should be modified to include ALL technologies as described in the newly enacted statute and to direct the utilities to establish a VNM tariff that provides "full retail" credit for all eligible renewable energy resources that meet the requirements of Public Utilities Code § 2827 and a separate VNM tariff that provides "generation only" credit for fuel cell technologies that meet the requirements of Public Utilities Code §2827.10.

[2] Senate Bill 489 (Chapter 593, Statutes of 2011) – Section 1

IV. CONCLUSION

For the reasons described above, ClearEdge Power and Bloom Energy Corporation urge the Commission to support ALL distributed generation technologies and meet the Legislature's goals by applying VNM to ALL net metering eligible technologies. We sincerely appreciate the Commission's continued support for DG and for the work to date on VNM and believe a modest modification to the VNM decision will allow more customers to be a part of California's energy future.

Respectfully submitted,

By: _____/s/_____

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