

## 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)

**ORDER MODIFYING DECISION (D.) 12-05-035, AND DENYING REHEARING OF DECISION, AS MODIFIED**

**I. INTRODUCTION**

In Decision (D.) 12-05-035 (or “Decision”), we implemented amendments to Public Utilities Code section 399.20.<sup>1</sup> The Decision adopted a new pricing mechanism and other new or revised components for the Feed-in Tariff (“FiT”) program under section 399.20. The Decision refers to the new program resulting from these revisions to the FiT as the Renewable Market Adjusting Tariff (“Re-MAT”). The Decision also denied two petitions for modification of *Opinion Adopting Tariffs and Standard Contracts for Water, Wastewater and Other Customers to Sell Electricity Generated from RPS-Eligible Renewable Resources to Electrical Corporations* [D.07-07-027](2007) \_\_ Cal.P.U.C.3d \_\_, the decision that initially established the tariffs and standard contracts for the investor-owned utilities (“IOUs”) under section 399.20.

Applications for rehearing of D.12-05-035 were timely filed by the Center for Energy Efficiency and Renewable Technologies (“CEERT”); Placer County Air Pollution Control District (“District”); Sustainable Conservation; CALifornians for

<sup>1</sup> All subsequent section references are to the Public Utilities Code unless otherwise specified.

Renewable Energy, Inc. (“CARE”); and jointly by the Clean Coalition and Sierra Club California (collectively, “Clean Coalition/Sierra Club”).

CEERT alleges that the Decision violates section 399.20 by: (1) adopting a pricing mechanism that does not incorporate “environmental compliance costs;” (2) failing to demonstrate that a pricing mechanism based on the Renewable Auction Mechanism (“RAM”) will attract the projects and technology types the Legislature intended to target through section 399.20; and (3) limiting the overall program size to 750 MW, which includes the existing 250 MW in the Assembly Bill 1969 (Stats. 2006, ch. 731) (“AB 1969”) program that were executed pursuant to the program established under D.07-07-027.

The District requests that the Commission grant rehearing on the issue of whether or not existing contracts executed under the FiT established by D.07-07-027 should be included in the new 750 MW cap implemented by the Decision. The District’s rehearing application relies on a motion it filed requesting that the Commission reopen the record in order to take official notice of the existing less than 3 MW contracts that are for facilities in the IOUs’ service territories.

Sustainable Conservation alleges the following errors: (1) the Decision violates Senate Bill 32’s (Stats. 2009, ch. 328) (“SB 32”) mandates concerning environmental compliance costs; (2) the Decision adopted an inappropriate pricing benchmark that is not based on comparable relevant resources; and (3) the Decision renders the FiT program inaccessible to certain technology types, particularly baseload projects.

CARE alleges the Decision fails to comply with the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and the regulations and orders of the Federal Energy Regulatory Commission (“FERC”) by, among other things: (1) failing to adopt technology specific pricing; (2) adopting a price based on the RAM; (3) using a weighted average of the utilities’ data to determine a single FiT starting price; and (4) adopting a price adjustment mechanism. CARE also alleges numerous other factual and legal errors, including: (1) the Decision does not accurately cite all the sections of

PURPA; (2) the Decision erroneously states it uses the FERC's most recent guidance on avoided cost pricing; (3) the Decision errs by requiring utilities to file a motion to temporarily suspend the program where there is evidence of market manipulation; (4) the Energy Division's approval of recent advice letters based on the first RAM solicitation violates General Order ("GO") 96-B; and (5) the Decision finds that additional measures must be taken to prevent daisy-chaining but the Commission has a history of approving daisy chaining contracts. CARE also alleges that the filing of its rehearing application stays the Decision for at least 60 days.

Clean Coalition/Sierra Club allege the following errors: (1) the Decision violates SB 32's requirement to provide a price for avoided transmission and distribution costs; (2) the Decision violates SB 32's requirement to provide compensation for mitigation of local environmental compliance costs; (3) the Decision is contradictory regarding whether the FiT program can be quickly subscribed; (4) the requirement that projects may not incur transmission upgrade expenses over \$300,000 eliminates a substantial portion of potential SB 32 projects; (5) the Decision erroneously suggests that developers can use the IOU interconnection maps to determine whether a project is likely to have transmission impacts; (6) the Decision fails to provide sufficient clarity in prescribing allocation of capacity; and (7) the Decision fails to clarify whether the program under AB 1969 is suspended. Clean Coalition/Sierra Club also allege that the Decision contains numerous typographical and grammatical errors that may cause confusion in implementation.<sup>2</sup>

Southern California Edison Company ("Edison") and Pacific Gas and Electric Company ("PG&E") jointly filed two responses to the rehearing applications: one response to CARE's rehearing application ("Resp. to CARE Rehr. App.") and one

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<sup>2</sup> Clean Coalition/Sierra Club's citations to the Decision are inaccurate throughout their rehearing application as they do not correspond to the official slip opinion of the Decision issued by the Commission.

response to the rehearing applications filed by CEERT, the District, Clean Coalition/Sierra Club, and Sustainable Conservation (“Resp. to Rehr. Apps.”).

We have reviewed each and every argument raised in the rehearing applications and are of the opinion that modifications, as described herein, are warranted to: (1) explain that the adopted pricing mechanism should account for all of the generator’s costs, including environmental compliance costs; (2) delete the statement that the Commission seeks to pay generators the price needed to build and operate a renewable generation facility; (3) delete statements that imply that avoided costs under PURPA are based in part on avoided ratepayer costs; (4) correct statements regarding section 399.20(f)’s requirement that the tariff be available on a “first-come-first-served basis;” (5) clarify the reasons for declining to adopt a location or transmission adder; (6) delete the statement that the FiT program may be quickly subscribed; (7) clarify how the program’s capacity is allocated and incrementally released; (8) delete statements that the Market Price Referent (“MPR”) is based on a “market;” (9) clarify statements regarding the legal requirements for setting avoided cost and the holdings of *California Public Utilities Commission* (“FERC Clarification Order”) (2010) 133 FERC ¶ 61,059; (10) correct the statement that subscription in a two-month period can equal more than 100% of the initial capacity allocation for a product type; and (11) correct typographical errors. As modified, rehearing of D.12-05-035 is denied. We also reject the District’s rehearing application for failing to meet the requirements of section 1732.

## II. DISCUSSION

### A. Allegation that the Decision erred by not including environmental compliance costs in the Re-MAT price

CEERT, Sustainable Conservation, and Clean Coalition/Sierra Club allege that the Decision fails to include environmental compliance costs in the Re-MAT price, and thus, fails to comply with SB 32 and the requirements of section 399.20 that the payment pursuant to the standard tariff “shall include all current and anticipated

environmental compliance costs.” (CEERT Rehr. App., pp. 8-12; Sustainable Conservation Rehr. App., p. 3-5; Clean Coalition/Sierra Club Rehr. App., p. 7.)<sup>3</sup>

SB 32 states that among other things: “a tariff for electricity generated by renewable technologies should recognize the environmental attributes of the renewable technology.” (Sen. Bill No. 32 (Stats. 2009, ch. 328) § 1, subd. (e).) Section 399.20(d)(1) provides that the payment pursuant to the standard tariff:

shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located.

The Re-MAT uses the RAM as a starting price with the price for each product type increasing or decreasing via a price adjustment mechanism to respond to market conditions. The Decision determined that the general costs associated with producing renewable energy were embedded in the starting price of the RAM but that specific costs, such as the compliance costs in a particular air quality management district, were not necessarily captured by the RAM pricing methodology. (D.12-05-035, pp. 42 & 53.) The Decision declined to adopt an adder for environmental compliance costs. The Decision found that there was insufficient information in the record to adopt an adder for environmental compliance costs, but stated that it would prioritize and resolve this issue at a later date. (D.12-05-035, p. 54.)

In their response to the rehearing applications, Edison and PG&E assert that environmental compliance costs are accounted for via the Re-MAT price adjustment

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<sup>3</sup> CEERT’s rehearing application conflates “environmental adders” reflecting certain environmental attributes with “environmental compliance costs.” (See CEERT Rehr. App., pp. 9-10.) As explained in the Decision, these are two distinct types of costs. (D.12-05-035, p. 51.) To the extent CEERT is alleging that the Commission erred in declining to adopt specific environmental adders to account for the environmental benefits produced by certain renewable technologies, CEERT fails to demonstrate any legal error. As explained in Section II.B., below, the general costs associated with producing renewable energy are accounted for in the Re-MAT price and there is no legal requirement for any technology-specific adder.

mechanism. (Resp. to Rehr. Apps., p. 2.) According to Edison and PG&E, under the Re-MAT, generators will strike on the available price that covers their project costs, including environmental compliance costs, plus a reasonable rate of return. (Resp. to Rehr. Apps., pp. 2-3.)

Indeed, the rationale for a market-based price is that all of the generator's costs are included in the price because a generator would not bid something lower than its costs. In a market-based process, the seller determines the price it wishes to seek based on its understanding of the underlying project costs, and changes in those costs. (*Decision Adopting the Renewable Auction Mechanism* [D.10-12-048] (2010) \_\_ Cal.P.U.C.3d \_\_, p. 17 (slip op.)). In adopting the RAM, we found that a rational bidder would include all of its costs in its bid. (*Id.* at p. 85 [Finding of Fact (“FOF”) 36].)

Given that all costs incurred by a generator are presumed included in a market-based price, we see no reason why environmental compliance costs should be treated differently from any other costs incurred by a generator. A generator should include all of its costs, including any environmental compliance costs, in its price for the Re-MAT. The Re-MAT price adjusts based on market conditions and demand and, thus, should account for these costs. (See also, *Southern California Edison Company's Comments to Section 399.20 Ruling dated June 27, 2011*, dated July 21, 2011, p. 4 [market-based process would allow current and anticipated environmental costs to be included in the price]; *Clean Coalition Reply Comments on ALJ Ruling*, dated August 26, 2011, p. 31 [price adjustment mechanism could result in a price that includes environmental compliance costs].) Therefore, we modify the Decision, as set forth in the ordering paragraphs below, to explain that because the Re-MAT is a market-based price, it should include all of the generator's costs, including current and anticipated environmental compliance costs.

In discussing the issue of environmental compliance costs, the Decision also stated that “[w]e seek to pay generators the price needed to build and operate a renewable generation facility.” (D.12-05-035, p. 42.) Clean Coalition/Sierra Club claim that this language violates SB 32 and is nowhere in the law. (Clean Coalition/Sierra Club

Rehrg. App., p. 7.) Clean Coalition/Sierra Club do not specify what provisions of SB 32 this language would violate. But we agree that there is no legal requirement that these costs be recovered and we modify the Decision, as set forth in the ordering paragraphs below, to delete this unnecessary statement. (See Pub. Util. Code, § 399.20, subd. (d)(2).)

**B. Allegations that the FiT should be based on technology-specific pricing with set asides for specific technologies**

Sustainable Conservation and CEERT allege that the Commission erred in basing the Re-MAT price on the RAM.<sup>4</sup> Sustainable Conservation asserts that the RAM is not a relevant benchmark because it is for projects up to 20 MW whereas the Re-MAT is for small renewable projects up to 3 MW. (Sustainable Conservation Rehrg. App., pp. 5-6.) According to Sustainable Conservation, less than 2% of projects that bid into the November 2011 RAM auction were from baseload technologies. (Sustainable Conservation Rehrg. App., p. 6.) Relying on the analysis of Fuel Cell Energy, Inc. (“Fuel Cell”), Sustainable Conservation asserts that the Commission should develop an auction for each technology type. (Sustainable Conservation Rehrg. App., p. 7)

CEERT alleges that the Decision failed to explain how a pricing mechanism based on the RAM will attract the projects and technology types the Legislature intended to target through section 399.20. According to CEERT, the November 2011 RAM solicitation only yielded solar PV and was not technology-neutral. (CEERT Rehrg. App., p. 7.)

The purpose of a rehearing application is to alert the Commission to legal error. A rehearing application must set forth specifically the grounds on which the applicant considers the decision to be unlawful. (Pub. Util. Code, § 1732; Code of Regs., tit. 20, § 16.1, subd. (c).) The purpose of a rehearing application is not to re-litigate policy determinations. (See Pub. Util. Code, § 1732; Code of Regs., tit. 20, § 16.1, subd. (c).)

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<sup>4</sup> CARE also makes allegations that the Commission erred in basing the Re-MAT price on the RAM based on federal law. These allegations are addressed in Section II.E.5., below.

Sustainable Conservation and CEERT fail to demonstrate that the pricing methodology adopted in the Decision violates any law. The rehearing applications do not identify a legal requirement that the Commission establish technology-specific pricing or ensure that the FiT attract any specific type of technology other than generation from eligible renewable energy resources.

The Legislature stated its intent to encourage electrical generation from eligible renewable energy resources that meet certain criteria, including having an effective capacity of not more than 3 MW, and being strategically located. (Pub. Util. Code, § 399.20, subds. (a) & (b).) Section 399.20 requires the Commission to “establish a methodology to determine the market price of electricity” for the FiT. (Pub. Util. Code, § 399.20, subd. (d)(2).) In establishing a methodology for the FiT price, the statute requires the Commission to take into account, among other things, the value of different electricity products including baseload, peaking, and as-available electricity. (Pub. Util. Code, § 399.20, subd. (d)(2).) But the statute does not require the Commission to take into account the value of any specific technology type.<sup>5</sup> Subject to express statutory requirements, we have the discretion to determine how the FiT will be implemented. (See Pub. Util. Code, §§ 399.20, subd. (d) & 701; *Consumer Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905-906.) Sustainable Conservation relies on Fuel Cell’s analysis but Fuel Cell itself acknowledged that “[i]t is clear that there is more than one way the Commission can calculate a price for SB 32 resources.” (*Fuel Cell Energy, Inc. Comments to Sec. 399.20 Ruling of June 27, 2011*, dated July 21, 2011, p. 3.)

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<sup>5</sup> Subsequent to the issuance of the Decision, the Legislature enacted Senate Bill 1122 (Stats. 2012, ch. 612) (“SB 1122”), which amended section 399.20 to require electrical corporations to “collectively procure at least 250 megawatts of cumulative rated generating capacity from developers of bioenergy projects that commence operation on or after June 1, 2013.” SB 1122 was enacted on September 27, 2012 and is effective as of January 1, 2013. (See Gov. Code, § 9600.) We will be instituting proceedings to implement SB 1122. This order, and any modifications to the Decision made in this order, are based on the statutory requirements that were in place at the time of the issuance of the Decision.

The Decision found that a FiT price based on the results of the November 2011 RAM auction, coupled with an adjustment mechanism, best reflected the market price of generation from eligible renewable energy resources, and was consistent with state and federal law, as well as policy objectives. (D.12-05-035, pp. 118 [Conclusions of Law (“COLs”) 19-21] & 119 [COL 31].) Sustainable Conservation and CEERT do not demonstrate that there is any legal error in these determinations. We determined that a starting price based on the RAM was reasonable because the RAM price is based on the market price of renewable energy. (D.12-05-035, p. 118 [COL 21].) We found that the renewable market has evolved since we established the MPR at the beginning of the Renewable Portfolio Standard (“RPS”) program and that the renewable market was now sufficiently robust to serve as the point of reference for establishing the market price for small renewable projects. (D.12-05-035, p. 109 [FOFs 4 & 5]; see, e.g., *Southern California Edison Company’s Reply Comments to Section 399.20 Ruling dated June 27, 2011*, dated August 26, 2011, p. 10; *The Division of Ratepayer Advocates’ Comments to Section 399.20 Ruling Issued June 27, 2011*, dated July 21, 2011, p. 4.)

Sustainable Conservation and CEERT’s allegations also fail to take into account the fact that the RAM price is only the starting point for the Re-MAT price. We recognized that the market segments covered by the RAM and section 399.20 are not identical. (D.12-05-035, pp. 39-40.) The RAM covers renewable projects sized up to 20 MW whereas the section 399.20 FiT Program covers renewable projects sized up to 3 MW. For that reason, we adopted a price adjustment mechanism to increase or decrease the FiT price for the three product types based on market conditions.<sup>6</sup> The Decision also provided for the starting price to be adjusted by time-of-delivery factors. Furthermore, although the Decision did not adopt set asides for specific technologies, the Decision did

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<sup>6</sup> CEERT claims that the price adjustment mechanism conflicts with the law. (CEERT Rehr. App., p. 10.) But CEERT does not specify what law or provide any support for this allegation. Thus, CEERT does not demonstrate a basis for legal error with regard to this issue. (See Pub. Util. Code, § 1732, Cal. Code Regs., tit. 20, § 16.1, subd. (c).)

require that the utilities allocate an equal portion of their assigned capacity to the three product types. (D.12-05-35, p. 49.)

As explained in the Decision, we had many reasons for rejecting technology-specific pricing or adders, and for declining to adopt set asides for any specific technologies. We found adders for specific technology types and technology-specific pricing to be inconsistent with the following policy guidelines for the FiT program: (1) establish a feed-in tariff price based on quantifiable utility avoided costs that will stimulate market demand; (2) contain costs and ensure maximum value to the ratepayer and utility; and (3) ensure administrative ease and lower transaction costs for the buyer, seller, and regulator. (D.12-05-035, pp. 33, 34-35.) We determined that environmental adders for specific technologies were not consistent with the ratepayer indifference requirement in section 399.20(d)(4) and the goals of cost containment within the RPS Program. (D.12-05-035, p. 52; see also Pub. Util. Code, §§ 399.15, subds. (c) & (d), 399.20, subd. (d)(4).) The Decision also found that the methodologies used to calculate various technology-specific adders were not based on the utilities' avoided costs, and therefore, would not be the type of "avoided costs" permitted under PURPA.<sup>7</sup> (D.12-05-035, p. 32; see also 18 C.F.R. § 292.304, subd. (a)(2).)

We also declined to adopt these program requirements in part because we interpreted the provision in section 399.20(f) that the tariff be available on a "first-come-first-served basis" as restricting the Commission from adopting these program requirements. (D.12-05-035, pp. 62, 81, 111 [FOFs 21 & 22].) Upon revisiting this issue, we find that the statute does not restrict the Commission from adopting program requirements for the FiT Program.

Section 399.20(f) provides that "[a]n electrical corporation shall make the tariff available ... on a first-come-first-served basis." This section discusses the

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<sup>7</sup> The Decision also implied that avoided costs under PURPA are based in part on avoided ratepayer costs. (D.12-05-035, pp. 32-33.) Avoided costs under PURPA are based on utilities' avoided costs. (18 C.F.R. § 292.304, subd. (a)(2).) We modify the Decision to delete any statements that imply otherwise.

obligation of the utilities, and does not discuss the Commission's authority to impose program requirements.

The Commission has broad authority over public utilities, including authority over the utilities' resource portfolios and procurement planning, and in implementing the RPS Program. (See, e.g., Cal. Const., art. XII, § 6; Pub. Util. Code, §§ 399.11 et seq., 454.5, 701.) The Commission has the authority to act even in cases where there is no express statutory authorization so long as the additional power and jurisdiction the Commission exercises are cognate and germane to the regulation of public utilities, and do not contravene or disregard an express legislative directive. (Pub. Util. Code, § 701; *Consumer Lobby Against Monopolies v. Public Utilities Com.*, *supra*, 25 Cal.3d at pp. 905-906; *Assembly v. Public Utilities Com.* (1995) 12 Cal. 4th 87, 103.)

Based on the foregoing, we modify the Decision, as set forth in the ordering paragraphs below, to delete any language that suggests that section 399.20(f) restricts the Commission's authority. As explained above, the Commission is not restricted from adopting program requirements for the FiT so long as the imposition of these requirements does not contravene other statutory requirements. To the extent that the Commission imposes program requirements for the FiT, the electrical corporations would comply with section 399.20(f) by incorporating these program requirements into their tariffs, which would be offered on a first-come-first-served basis pursuant to section 399.20(f).

As modified, we deny rehearing as CEERT and Sustainable Conservation have failed to demonstrate any legal error regarding the Decision's determination to reject technology-specific pricing, adders, or set-asides for the FiT for the other reasons stated above.

**C. Allegation that the Decision erred in adopting a 750 MW program cap**

The Decision set a statewide program capacity cap of 750 MW. The Decision determined that this cap applied to the IOUs and publicly owned utilities. The Decision also determined that capacity under contract in the existing AB 1969 program

would be included in the cap. (D.12-05-035, pp. 74-77.) CEERT argues that the Decision does not examine the impact of setting a 750 MW program cap, and allocating some of the program capacity to existing AB 1969 FiT projects and to the publicly owned utilities. (CEERT Rehr. App., pp. 7-8, 13.)

CEERT fails to demonstrate any legal error on this issue. The program cap adopted in the Decision is consistent with the statutory requirement that an electrical corporation make the tariff available until it meets its proportionate share of “a statewide cap of 750 megawatts *cumulative* rated generation capacity served under [section 399.20] and section 387.6.” (Pub. Util. Code, § 399.20, subd. (f), emphasis added.)<sup>8</sup> The current 3 MW FiT Program superseded and modified the existing AB 1969 program. AB 1969 projects are also served under section 399.20 and, thus, subject to the 750 MW cumulative cap. This cumulative cap also applies to projects under section 387.6. Section 387.6 requires local publicly owned utilities to adopt a standard tariff for electricity purchased from eligible renewable energy resources. Based on the foregoing, there is no legal error in adopting a 750 MW program cap, in including the AB 1969 contracts in the cap, and in allocating some of program capacity to the publicly owned utilities. To the extent that CEERT is attempting to relitigate the policy implications of this cap, this does not constitute a basis for granting rehearing. (Pub. Util. Code, § 1732; Code of Regs., tit. 20, § 16.1, subd. (c).)

**D. Other Allegations in Clean Coalition/Sierra Club’s Rehearing Application**

**1. Allegation that the Decision violates SB 32’s requirement to provide a price for avoided transmission and distribution costs**

SB 32 states:

A tariff for electricity generated by renewable technologies should recognize the environmental attributes of the

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<sup>8</sup> As noted in footnote 5, above, SB 1122 recently amended section 399.20 to increase the program cap by an additional 250 MW for bioenergy projects.

technology, the characteristics that contribute to peak electricity demand reduction, reduced transmission congestion, avoided transmission and distribution improvements, and in a manner that accelerates the deployment of renewable energy resources.

(Senate Bill 32, Stats. 2009, ch. 328, § 1, subd. (e).) Clean Coalition/Sierra Club allege that the Decision violates this provision of SB 32 by failing to adopt a location or transmission adder. (Clean Coalition/Sierra Club Rehr. App., pp. 5-6.) This allegation lacks merit.

The price requirements for the tariff are set forth in section 399.20(d). Payment under the FiT shall be “the market price determined by the [C]ommission....” (Pub. Util. Code, § 399.20, subd. (d)(1).) The statute requires the Commission to consider various factors in establishing a pricing methodology for the FiT, but does not specifically require that avoided transmission and distribution costs be included in the FiT price. Clean Coalition/Sierra Club claim that these costs are required to be included in the price based on section 1, subdivision (e) of SB 32, but this subdivision does not dictate pricing requirements for the FiT. With regard to avoided transmission and distribution improvements, this subdivision merely evinces the Legislature’s intent that the tariff recognize “the characteristics that contribute to ... avoided transmission and distribution improvements.” The Decision’s implementation of the requirement that projects be “strategically located” goes to this intent. (D.12-05-035, pp. 38, 56-59.)

Assuming *arguendo* that any law required that avoided transmission and distribution improvements be included in the FiT price, Clean Coalition/Sierra Club still fail to demonstrate that the Decision erred in declining to adopt a location or transmission adder. Any location or transmission adder must be based on costs that are found to be actually avoided by the utilities. (18 C.F.R. § 292.304, subd. (a)(2); *FERC Clarification Order, supra*, 133 FERC ¶ 61,059, at P 31.) In this case, the Decision found that the record did not support a finding that the location and transmission adders proposed during the proceeding represented actual costs that would be avoided by the utilities. (D.12-05-035, pp. 37-38; see, e.g., *Southern California Edison Company’s Reply*

*Comments on the October 13, 2011 Renewable FIT Staff Proposal*, dated November 14, 2011, pp. 12-13; *Pacific Gas and Electric Company's Comments on Staff Proposal Regarding the Implementation of Section 399.20*, dated November 2, 2011, pp. 17-19.)

The Decision stated that a location or transmission adder are “either inconsistent with existing law or require more development” and that “additional scrutiny is needed before the Commission adopts a location adder.” (D.12-05-035, pp. 37-38.) In order to eliminate any confusion, we modify the Decision, as set forth in the ordering paragraphs below, to clarify that we declined to adopt these adders because we did not find that they were warranted based on the record of this proceeding. This does not foreclose the possibility that a location or transmission adder may be adopted for the program in the future if these adders are found to reflect costs actually avoided by the utilities.

**2. Allegation that the Decision is contradictory regarding whether the FiT program can be quickly subscribed**

The Decision directed the utilities to incrementally release a portion of their total program capacity allocation every two months for a 24-month period. (D.12-05-035, p. 119 [COL 28].) The Decision also stated: “We are sensitive, however, to the fact that the program’s MW may quickly be subscribed. In that situation, we will consider proposals from parties to expand the program.” (D.12-05-035, p. 76.)

Clean Coalition/Sierra Club assert that the Decision contradicts itself when it suggests the FiT Program may be expanded if the program’s capacity is quickly subscribed because it is not possible to fully subscribe the program before 24 months have run. (Clean Coalition/Sierra Club Rehr. App., p. 8.)

Clean Coalition/Sierra Club fail to identify any legal error. Thus, there is no basis for rehearing. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) Although there is no demonstration of legal error, we acknowledge that the statement that the program may be quickly subscribed may be confusing in light of the

directive that the utilities incrementally release their allocated capacity over a 24-month period. Therefore, we modify the Decision to delete this unnecessary statement.

**3. Allegation that the Decision erred in requiring that any transmission upgrade expenses may not exceed \$300,000**

The Decision determined that in order for a generation facility to be considered “strategically located” pursuant to section 399.20(b), a generator must be interconnected to the distribution system, and the project must not require more than \$300,000 of transmission system network upgrades. (D.12-05-035, p. 58.) Clean Coalition/Sierra Club allege that the requirement that the project must not require more than \$300,000 of transmission system network upgrades may eliminate a substantial portion of potential SB 32 projects. (Clean Coalition/Sierra Club Rehr. App., p. 9.)

Clean Coalition/Sierra Club do not allege any legal error regarding this issue. Assuming arguendo that this program requirement may eliminate some potential projects, Clean Coalition/Sierra Club do not explain what law would be violated. Thus, rehearing is not warranted. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) We, in fact, imposed the requirement that a project not exceed more than \$300,000 of transmission system network upgrades in order to implement the statutory requirement that a general facility be “strategically located.” (See Pub. Util. Code, § 399.20, subd. (b)(3).)

Moreover, Clean Coalition/Sierra Club’s allegations are vague and speculative. Their rehearing application alleges that “in certain circumstances” the expense allowance will be exceeded and that the IOU requirement “may eliminate a substantial portion of potential SB 32 projects.” (Clean Coalition/Sierra Club Rehr. App., p. 9.) Clean Coalition/Sierra Club do not cite to any evidence in the record in support of their allegations. A rehearing must make specific references to the record or law. (Cal. Code Regs., tit. 20, § 16.1, subd. (c).) As support for their allegations, Clean Coalition/Sierra Club cite to an attached appendix with what is purportedly a discussion Clean Coalition had with PG&E. (Clean Coalition/Sierra Club Rehr. App., p. 9.) But

we cannot consider this discussion in disposing of the rehearing application as it was not a part of the record of this proceeding.

**4. Allegation that the Decision erred in requiring use of the utilities' interconnection maps**

The Decision stated that it expects generators to use the utilities' interconnection maps to locate sites that have a low likelihood of transmission impacts. (D.12-05-035, pp. 58-59.) We have required the utilities to provide these maps to assist projects to locate in preferred locations for the RAM program. (D.10-12-048, *supra*, at pp. 70-72 (slip op.)) Clean Coalition/Sierra Club assert that these maps do not have data that will help developers determine potential transmission impacts, as determined by the IOUs. (Clean Coalition/Sierra Club Rehr. App., p. 10.)

Clean Coalition/Sierra Club do not raise any legal error. Rather, Clean Coalition/Sierra Club raise an implementation issue that is not appropriate for consideration in a rehearing application. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) Thus, there is no basis for rehearing of this issue.

The interconnection maps are merely a tool for generators to use to identify potential project sites. The Decision stated that generators can use these maps to locate sites that have a *low likelihood* of transmission impacts; the use of these maps does not necessarily guarantee eligibility or approval of the project for the section 399.20 FiT Program. (See D.12-05-035, pp. 58 & 69-70 [projects must still meet project viability criteria].)

**5. Allegations that the Decision's methodology for allocating capacity is unclear**

Clean Coalition/Sierra Club claim that the Decision's methodology for allocating capacity is unclear and potentially contradictory. (Clean Coalition/Sierra Club Rehr. App., pp. 10-11.) According to Clean Coalition/Sierra Club, it's not clear that each two-month adjustment period has a capacity sum of the two months. They also state that the Decision does not specify how to handle contracted capacity from the AB 1969 FiT contracts.

The fact that Clean Coalition/Sierra Club are unclear about aspects of the Decision does not constitute legal error or a basis for rehearing of the Decision. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) But we recognize that aspects of the Decision's discussion of the incremental release of capacity may have caused confusion and take this opportunity to make some clarifications.

The Decision stated that the utilities are to incrementally release a portion of their total program capacity allocation every two months for a 24-month period. (D.12-05-035, p. 119 [COL 28].) The Decision instructed: "To implement this directive, each utility must divide the total program capacity by 24 and then assign one third into each product type." (D.12-05-035, p. 49.) The Decision also provided that during the first allocation period, i.e. months 1 and 2, there is a minimum allocation of 3 MW for each product type. (D.12-05-035, p. 49.) This 3 MW is to be deducted from each utility's total capacity allocation prior to the allocation among product types.

It appears that there is some confusion in that there are 12 adjustment periods but the Decision directed the utilities to divide the total program capacity by 24. This directive may also be confusing in light of the mandatory 3 MW allocation during the first period. We modify the Decision, as set forth in the ordering paragraphs below, to clarify that: (1) the utilities should divide the total program capacity by 12 and then assign one-third into each product type; and (2) if dividing the total program capacity by 12 results in less than 3 MW being allocated to a product type per adjustment period, the utilities are to first allocate the minimum 3 MW per product type in the first adjustment period, and then equally allocate their remaining capacity among the three product types over the remaining 11 adjustment periods. We also clarify that the terms "initial starting capacity" and "initial capacity allocation" both refer to the amount of capacity allocated to each adjustment period. (See D.12-05-035, pp. 46-47, 48.)

With regard to the capacity under contract under the AB 1969 program, the Decision found that this capacity must be subtracted from each utility's total capacity allocation. (D.12-15-035, p. 77.) To the extent that there is any confusion, we clarify that

each utility is to subtract this capacity from its total capacity allocation prior to allocation among the three product types.

Clean Coalition/Sierra Club also allege that the allocation methodology may result in less than 3 MW being available for a project, which contradicts SB 32's allowance of up to 3 MW per project. (Clean Coalition/Sierra Club Rehrig. App., pp. 10, 11-13.) This allegation lacks merit. The statute states that in order for a generator to be eligible for the section 399.20 FiT, it must have an effective capacity of not more than 3 MW. (Pub. Util. Code, § 399.20, subd. (b)(1).) The statute does not require an allowance of 3 MW per project; it merely places size limitations on the generators that can participate in the FiT program. The fact that a generator may be eligible for the FiT does not guarantee participation in the program. There is a limited amount of capacity available under the program. Further, in implementing the FiT and the RPS program, we are also required to consider other factors such as the impact on ratepayers and cost. (Pub. Util. Code, §§ 399.15, subds. (c) and (d), 399.20, subd. (d)(4), 451.) The Decision adopted the incremental release of capacity "to minimize ratepayer exposure to a large number of non-competitively priced contracts while ensuring that some capacity is available for each product type, for which there is market interest." (D.12-05-035, pp. 49-50.)

Furthermore, the Decision did provide for changes to be made to the adjustment mechanism and allocation methodology depending on the market's response. Because the adjustment mechanism is a new feature of the FiT program, the Decision ordered utilities to convene stakeholder meetings within the first year of the program to solicit market experience with the price adjustment mechanism and authorized the utilities to file an advice letter to seek changes to the mechanism. (D.12-05-035, pp. 50 & 124 [Ordering Paragraph ("OP") 3].) The AB 1969 program is still in effect and, therefore, it is not presently known exactly how much capacity will be allocated to each adjustment period under the 3 MW FiT Program.

**6. Allegation that the Decision is unclear regarding the status of the AB 1969 program**

Clean Coalition/Sierra Club allege that the failure of the Decision to clarify whether the AB 1969 Program is suspended or not has created uncertainty. (Clean Coalition/Sierra Club Rehr. App., pp. 13-14.) This allegation is moot. Subsequent to the issuance of the Decision, the Administrative Law Judge (“ALJ”) issued a ruling clarifying that the existing FiT Programs implemented under AB 1969 will remain effective until replaced by the new tariffs ordered in the Decision. (*Administrative Law Judge’s Ruling Clarifying Status of Existing Assembly Bill 1969 Feed-In-Tariff Program Per the Motion by Southern California Edison Company*, dated July 10, 2012.)

**E. Allegations in CARE’s Rehearing Application**

**1. Allegation that the Decision is stayed**

CARE claims that because it filed its rehearing application within 10 days of issuance of the Decision, the Decision is stayed for at least 60 days. (CARE Rehr. App., p. 1.) This claim lacks merit.

CARE does not cite to any legal authority or provide any explanation as to why its filing of a rehearing application would stay the Decision. The filing of a rehearing application ordinarily does not result in an automatic stay of a decision. (Pub. Util. Code, § 1735.) CARE may be relying on section 1733(a), which provides:

Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied; but, absent further order of the commission the order shall not stand so suspended for more than 60 days after the date of filing of the application, at which time the suspension shall lapse, the order shall become effective, and the application may be taken by the party making it to be denied.

But CARE did not file its rehearing application 10 days or more before the effective date of the Decision. The Decision was effective on May 24, 2012. CARE filed its rehearing

application on June 8, 2012. Therefore, there is no basis for a stay pursuant to section 1733(a) or any other law.

**2. Allegation that the Decision misstates PURPA's requirements**

CARE alleges that the Decision inaccurately cites to PURPA because it did not include citations to the Code of Federal Regulations and list all the codified sections of PURPA found in title 16 of the United States Code. (CARE Rehr. App., p. 8 citing D.12-05-035, p. 19, fn. 17.) CARE fails to demonstrate any error. Footnote 17 states that "PURPA is codified in scattered sections of 16 U.S.C., including [ §§ 796, 824a-3 and 2601 et seq]." Footnote 17 provided examples of some of the codified sections of PURPA but did not state that it is providing an exhaustive list of all of the sections of PURPA contained in title 16 of the United States Code. Further, the Code of Federal Regulations contains regulations implementing PURPA, not the codified sections of PURPA.

**3. Allegation that the Decision misstates the definition of Qualifying Facilities ("QFs")**

The Decision states that, "In general, QFs are alternative energy power production facilities that are primarily renewable or gas-fired cogeneration units." (D.12-05-035, p. 11.) As support for this statement, the Decision cited "See 18 C.F.R. § 292.304(a)." (D.12-05-035, p. 11, fn. 19.) CARE claims that this definition is inaccurate and unsupported by the citation provided in footnote 19 of the Decision. (CARE Rehr. App., pp. 9-10.) CARE fails to demonstrate that the statement in the Decision is inaccurate. (See also 18 C.F.R. §§ 292.101, subd. (b)(1) & 292.203 [providing definition and general requirements for qualification of QFs].) The statement does not purport to provide an exhaustive list of all facilities that can be QFs. Moreover, although 18 C.F.R. § 292.304(a) deals with rates for purchases, it also references the qualifying facilities from which these purchases are made.

**4. Allegation that the Decision does not cite to the most recent guidance regarding avoided costs provided by the FERC**

The Decision stated that the adopted Re-MAT price is consistent with PURPA, including the most recent guidance provided by the FERC regarding avoided cost pricing for QFs, the *FERC Clarification Order*. (D.12-05-035, p. 11.) CARE asserts that this statement is untrue because the most recent guidance from the FERC would have been *California Public Utilities Commission (“FERC Order Denying Rehearing”)* (2011) 134 FERC ¶ 61,044. (CARE Rehr. App., p. 10.) The *FERC Order Denying Rehearing* denied rehearing of the *FERC Clarification Order*. CARE does not explain what additional guidance regarding avoided cost pricing for QFs the *FERC Order Denying Rehearing* provided. CARE’s rehearing application cites to paragraphs 6 and 7 of the *FERC Order Denying Rehearing*. But these paragraphs merely recap the proceedings leading up to the *FERC Clarification Order* and the findings of that order. CARE also cites to paragraph 32, but in that paragraph, the FERC defended the finding in the *FERC Clarification Order* that a multi-tiered avoided cost rate structure is not prohibited by PURPA or FERC’s regulations. Thus, CARE does not demonstrate that we erred in characterizing the *FERC Clarification Order* as the most recent guidance from FERC on avoided cost pricing for QFs.

**5. Allegation that the pricing and interconnection violates PURPA**

CARE alleges that “the pricing and interconnection violates PURPA.” (CARE Rehr. App., p. 9 citing 18 C.F.R. §§ 292.303, subds. (a)(1), (a)(2), (c)(1), (d) & 292.304, subds. (a)-(e).) CARE fails to demonstrate that the Decision violates PURPA.

CARE makes the conclusory allegations that the Decision violates various subdivisions of 18 C.F.R. § 292.303 without providing any explanation. (See CARE Rehr. App., p. 9.) CARE fails to demonstrate any legal error or that rehearing is warranted based on any violation of 18 C.F.R. § 292.303. (See Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) Merely identifying a law, without providing any explanation of how it applies to the instant case, is insufficient to meet the

requirements of section 1732, which requires that a rehearing application “set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.” (Pub. Util. Code, § 1732; see also *Order Modifying Decision (D.) 07-10-013 and Denying Rehearing of the Decision as Modified* [D.10-07-050] (2010) \_\_\_ Cal.P.U.C.3d \_\_\_, at p. 19 (slip op.)) The purpose of a rehearing application is to “alert the Commission to a legal error, so that the Commission may correct it expeditiously.” (Cal. Code Regs., tit. 20, § 16.1, subd. (c).) A conclusory allegation, which does not provide any explanation but leaves the Commission to guess how its decision may be in error, does not serve this purpose.

18 C.F.R. § 292.303 imposes certain obligations on electric utilities. 18 C.F.R. § 292.303(a) and (d) describe an electric utility’s obligation to purchase from a QF. 18 C.F.R. § 292.303(c)(1) requires an electric utility to make the necessary interconnections with a QF to accomplish a purchase or sale. CARE does not cite to any aspect of the Decision that violates these subdivisions. CARE only cites to page 10, section 3.1 of the Decision. (CARE Rehr. App., p. 9.) But this section merely summarizes federal law with regard to setting avoided cost.

18 C.F.R. § 292.304 contains provisions for determining the rates for purchases from QFs. Although CARE’s rehearing application claims violations of subdivisions (a) through (e) of 18 C.F.R. § 292.304, CARE does not specify how the pricing adopted in the Decision violates each of these subdivisions. (See CARE Rehr. App., p. 9.) We address herein only the allegations regarding pricing that are actually specified in CARE’s rehearing application. With regard to the allegations of error that are conclusory and without explanation, we deny rehearing as these allegations also fail to meet the requirements of section 1732 and Rule 16.1 of the Commission’s Rules of Practice and Procedure.

CARE alleges that the Decision errs because PURPA and the FERC require the setting of administratively determined calculations using the data provided by the utilities. (CARE Rehr. App., p. 11 citing 18 C.F.R. § 292.302, subd. (b)(1).) There is no such requirement in PURPA. PURPA requires that the rate for purchases from QFs be

just and reasonable, non-discriminatory, and not exceed the utilities' avoided cost. (See 18 C.F.R. § 292.304, subd. (a).) The FERC gives wide latitude to states to implement PURPA and to determine what constitutes avoided cost. (*Independent Energy Producers Ass'n v. Pub. Util. Com.* (9th Cir. 1994) 36 F.3d 848, 856; *American REF-FUEL Company of Hempstead* (1989) 47 FERC ¶ 61,161, at ¶ 61,533.) The FERC has found that a rate based on a competitive solicitation may comply with avoided cost requirements. (See, e.g. *North Little Rock Cogeneration, L.P. v. Entergy Services, Inc.* (1995) 72 FERC ¶ 61,263, at ¶ 62,173.) In this instance, we found that a starting price based on a comparable renewable energy market, the RAM, coupled with a price adjustment mechanism, complied with avoided cost requirements. (D.12-05-035, pp. 38-40.)

CARE argues that the RAM Program is not the closest comparison to the Re-MAT. CARE asserts that we should have used the 2010 and 2011 Solar Photovoltaic Program ("SPVP") results rather than the RAM results. (CARE Rehr. App., pp. 10, 11-13.) CARE does not explain how the SPVP results are more comparable when the FiT Program is not limited to only solar resources. The section 399.20 FiT Program seeks to procure energy from renewable generation of 3 MW or less, and to take into account the value of different electricity products, including baseload, peaking, and as-available electricity. (Pub. Util. Code, § 399.20, subds. (b) & (d)(2)(C).)

CARE alleges that a price based on the RAM is a "false avoided cost" since it is lower than the MPR and the Decision states that even an MPR-based rate is not appropriate. (CARE Rehr. App., p. 13.) This allegation lacks merit. CARE fails to explain why the RAM is a "false avoided cost." The Decision explained why it was reasonable to base the Re-MAT price on the RAM, which is based on a renewable market, rather than on the MPR, which is based on the cost of a natural gas-fired plant.

(D.12-05-035, p. 31.)<sup>2</sup> The Decision found that the MPR price may be too high or too low for different FiT product types. (D.12-05-035, p. 31.) Moreover, the RAM is only the starting point for the Re-MAT price because it includes a price adjustment mechanism that will respond to market conditions for each product type and account for differences between the RAM and Re-MAT projects.

CARE claims that PURPA does not allow for the price adjustment mechanism described in the Decision, “which is a price adjustment mechanism that *has not been* made by the State Regulating Authority, the [Commission]...” (CARE Rehr. App., p. 14, emphasis in original.) CARE does not cite to any authority for the proposition that PURPA prohibits a price adjustment mechanism. As explained above, the states have wide latitude to determine avoided cost. CARE is also incorrect that the price adjustment mechanism has not been made by the state regulating authority as the Commission, which is the state regulating authority, adopted the price adjustment mechanism in the Decision. (D.12-05-035, p. 119 [COLs 25 & 26].)

**6. Allegations that the Decision violates the FERC’s mandates regarding technology and size-specific pricing**

CARE claims that the FERC has ordered technology and size-specific pricing. (CARE Rehr. App., p. 11.) According to CARE, using the same price for all 3 IOUs and for all 3 product types violates PURPA and the FERC’s rules and orders

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<sup>2</sup> The Decision suggested that the MPR is based on a “market.” (See D.12-05-035, p. 31.) The MPR is an administratively determined rate and not based on a “market.” We modify the Decision, as set forth in the ordering paragraphs below, to delete any suggestion that the MPR is based on a “market.” We also note that we have adopted pricing based on the MPR to determine the avoided cost for other programs implemented pursuant to PURPA, such as the Assembly Bill 1613 (Stats. 2007, ch. 713) (“AB 1613”) combined heat and power (“CHP”) program. (See, e.g., *Decision Adopting Policies and Procedures for Purchase of Excess Electricity Under Assembly Bill 1613* [D.09-12-042] (2009) \_\_ Cal.P.U.C.3d \_\_, pp. 74 [FOF 22] & 78 [COL 9] (slip op.)) We determined that a market-based price was appropriate for establishing the Re-MAT price because we found that the renewable market was now sufficiently robust to serve as a point of reference. (D.12-05-035, p. 117 [COL 11].) But the finding in the Decision that the Re-MAT price should not be based on the MPR does not modify our previous findings that an MPR-based rate is the appropriate avoided cost rate for other programs implemented pursuant to PURPA.

because avoided cost is to be differentiated by technology. (CARE Rehr. App., pp. 14-15 citing 18 C.F.R. § 292.304, subd. (c)(3)(ii), *FERC Clarification Order, supra*, and *FERC Order Denying Rehearing, supra*.) These allegations lack merit.

CARE misreads the pricing adopted in the Decision. The RAM price is merely the starting point for the Re-MAT price. Each utility is to apply a price adjustment mechanism to the starting price for each product type based on market interest. (D.12-05-035, p. 119 [COLs 25 & 26].) Each utility is also to adjust the starting price by time-of-delivery factors. (D.12-05-035, p. 119 [COL 24].) The starting price, in conjunction with the price adjustment mechanism and adjustment by time-of-delivery factors, may result in different prices for the different product types for each utility.

CARE is also mistaken that the FERC has ordered technology and size-specific pricing. 18 C.F.R. § 292.304(c)(3)(ii) provides that standard rates for purchases from QFs “[m]ay differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.” The *FERC Clarification Order* found that: “the concept of a multi-tiered avoided cost rate structure can be consistent with the avoided cost rate requirements set forth in PURPA and [the FERC’s] regulations.” (*FERC Clarification Order, supra*, 133 FERC ¶ 61,059, at P 26.) The FERC clarified that in determining the avoided cost rate, the Commission “may take into account actual procurement requirements, and resulting costs, imposed on utilities in California.”<sup>10</sup> (*Ibid.*) Therefore, although federal law permits states to set different avoided costs for various technologies, states are not necessarily required to do so.<sup>11</sup>

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<sup>10</sup> We modify the Decision, as set forth in the ordering paragraphs below, to clarify that the *FERC Clarification Order* permits the Commission to adopt avoided costs differentiated for particular sources of energy that a utility must purchase. (See *FERC Clarification Order, supra*, 133 FERC ¶ 61,059, at P 26; see also *Id.* at P 17, fn. 33.)

<sup>11</sup> The states have authority over the procurement decisions of the retail utilities, including the resource portfolios of the retail utilities. (See *New York v. FERC* (2002) 535 U.S. 1, 24 quoting *Order No. 888* (1996) FERC Stats. & Regs., Regs. Preambles, Jan. 1991-June 1996, ¶ 31,036, ¶ 31,792, n. 544.)

**7. Allegation that the Commission cannot guard ratepayers and small generators from market manipulation or malfunction**

The Decision stated that to guard against ratepayer exposure to excessive costs due to market manipulation or market malfunction of the Re-MAT pricing mechanism, the utilities shall file a motion to temporarily suspend all or part of the FiT program when evidence of market manipulation exists. (D.12-05-035, p. 47.)

CARE alleges that the Decision errs in that only a federal court can guard ratepayers and small generators. (CARE Rehr. App., pp. 15-16.) CARE asserts that the FERC has indicated that the Commission is not in compliance with PURPA. (CARE Rehr. App., p. 15 citing *Southern California Edison Company, et al.* (2011) 134 FERC ¶ 61,271.) CARE also states that a lawsuit pending in federal district court, *Solutions for Utilities, Inc., et al. v. California Public Utilities Commission, et al.* (C.D. Cal., No. CV 11-04975 SJO (JCGx)), alleges that the Commission, utilities, and the FERC “cannot be left to act upon market manipulation and market malfunction.” (CARE Rehr. App., p. 15.)

CARE’s allegations lack merit. The Commission has the authority and responsibility to ensure just and reasonable rates and charges for ratepayers. (See, e.g., Cal. Const., art. XII, §§ 1-6; Pub. Util. Code, §§ 451 & 701.) The Commission is charged with implementing the section 399.20 FiT Program, including adopting a pricing mechanism and ensuring that ratepayers remain indifferent to the rates and charges of the FiT. (Pub. Util. Code, § 399.20, subd. (d).) Thus, it is within the Commission’s authority to temporarily suspend the program it is charged with implementing where ratepayers are exposed to excessive costs due to market manipulation or malfunction. Further, in setting avoided cost rates, the Commission has the obligation to ensure that rates for utility purchases are just and reasonable and in the public interest. (18 C.F.R. § 292.304, subd. (a)(i).)

CARE offers no legal authority for the proposition that only a federal court can protect ratepayers from market manipulation or malfunction affecting a PURPA

program. *Southern California Edison Company, et al.* is not on point. That proceeding did not involve alleged market manipulation or malfunction, but was a petition under Section 210(h) of PURPA, 16 U.S.C. § 824a-3(h), alleging that the rate for the Commission's AB 1613 CHP program was in excess of the utilities' avoided cost. (*Southern California Edison Company, et al., supra*, 134 FERC ¶ 61,271, at P 1.) The FERC declined to initiate an enforcement action against the Commission and stated that the utilities may bring an enforcement action alleging violations of PURPA in the "appropriate court." (*Id.* at P 2.) Contrary to CARE's allegations, the FERC did not find that the Commission had violated PURPA. Even if the FERC had made such a finding, which it did not, this still would not mean that the Commission lacks the authority to protect ratepayers.

With regard to the lawsuit in federal district court, CARE fails to explain how allegations raised by a party in a lawsuit constitute legal authority. Moreover, the federal district court recently granted the defendants' Motion for Summary Judgment and dismissed the plaintiff's claims in that case. Although the court dismissed the plaintiff's claims for lack of standing, the court also noted that: "Plaintiff would have likely failed on its substantive PURPA arguments regardless." (Order Granting Motion for Summary Judgment, *Solutions for Utilities, Inc., et al. v. California Public Utilities Commission, et al.* (C.D. Cal., Jan. 3, 2013, No. CV 11-04975 SJO (JCGx)) at p. 9 (slip op.).)

Finally, *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County* (2008) 554 U.S. 527, which is cited by CARE, also is inapposite. *Morgan Stanley* did not hold that only a federal court has jurisdiction to address market manipulation or malfunction, and instead addressed the standards for the FERC's review and modification of wholesale electricity contracts under Section 205 of the Federal Power Act, 16 U.S.C. § 824d.

**8. Allegation that the price adjustment mechanism violates laws prohibiting market manipulation**

CARE asserts that the Decision violates 18 C.F.R. §§ 1c.1 and 1c.2, which prohibit market manipulation of the natural gas and electric energy markets. (CARE

Rehrg. App., pp. 16-19.) According to CARE, it is inevitable that there will be 100% program subscription for two years, and, therefore, the price adjustment mechanism would decrease the Re-MAT price to the point that it would become a negative value, which would mean that a generator would eventually have to pay the utilities to take its electric energy. (CARE Rehrg. App., pp. 17-18.)

CARE fails to demonstrate that the price adjustment mechanism will somehow result in or contribute to market manipulation. CARE mistakes how the price adjustment mechanism functions. The Decision provided that the Re-MAT price will decrease if there are five projects with different developers in the queue for a particular product type and if the subscription in the previous two-month period equaled 100% or more of the initial capacity allocation for that product type. (D.12-05-035, p. 48.) CARE appears to erroneously equate a developer being in the queue with a developer subscribing to the program. Once in the queue, a generator may still accept or reject the price. (D.12-05-035, p. 45.) CARE's allegations are based on the flawed premise that a generator would accept a price that would not account for its costs. The entire point of the adjustment mechanism is that it allows the Re-MAT price to adjust to the market price.

We modify the Decision, however, to clarify that subscription in a two-month period cannot equal more than 100% of the initial capacity allocation for a product type. In describing the price adjustment mechanism, the Decision suggested that subscription can be greater than 100%. (D.12-05-035, p. 48.) But this is not possible because any unsubscribed capacity at the end of a two-month period is reallocated to the end of the 24 months, starting with a new period at months 25-26. (D.12-05-035, p. 49.)

### **9. Allegations regarding approval of RAM contracts**

CARE's rehearing application alleges that the Energy Division's approval of the utilities' advice letters based on the first RAM solicitation violated GO 96-B. CARE alleges that pursuant to GO 96-B, these advice letters should have been treated as Tier 3 advice letters, which require Commission approval, rather than as Tier 2 advice

letters, which only require approval by the Energy Division. (CARE Rehr. App., pp. 19-22; see also General Order 96-B, Energy Industry Rule 5.)

CARE's allegations do not involve any claims of legal error in the Decision itself. We did not approve the RAM contracts in the Decision. Thus, the allegations regarding the approval of the RAM contracts do not provide a basis for rehearing of the Decision. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) CARE's rehearing application also omits the fact that in Resolution E-4414, which further implemented the RAM, we adopted a standard power purchase agreement for each utility and directed the utilities to submit executed RAM contracts through a Tier 2 advice letter. (Resolution E-4414, dated August 18, 2011, p. 45 [OP 4].)

#### **10. Allegation regarding daisy-chaining of contracts**

The Decision adopted measures to prevent daisy-chaining of projects to evade the project size restrictions of the § 399.20 FiT Program. (D.12-05-035, pp. 120 [COL 34] & 125[OP 6].) Providing examples of certain RAM contracts, CARE claims that the Commission has a history of approving contracts in excess of the 20 MW RAM size restriction. (CARE Rehr. App., pp. 23-24.)

CARE fails to specify any legal error in the Decision. CARE's rehearing application does not allege that the Commission violated any law by adopting measures to prevent daisy-chaining with regard to the § 399.20 FiT Program. To the extent CARE is arguing that the Commission erred in approving the RAM contracts, there is no basis for rehearing of the Decision as the Commission did not approve these contracts in the Decision. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).)

#### **F. The District's Rehearing Application**

The District requests that we grant rehearing on the issue of whether or not existing contracts should be included in the new 750 MW cap implemented by the Decision. The District's rehearing application solely relies on a motion it filed on June 27, 2012, requesting that we reopen the record in order to take official notice of the existing less than 3 MW contracts that are for facilities in the IOUs' service territories.

The District's rehearing application is rejected for failing to comply with the requirements of section 1732 and Rule 16.1 of the Commission's Rules of Practice and Procedure, which both require that a rehearing application "set forth specifically" the grounds on which the decision is unlawful. Reference to a separate motion does not "set forth specifically" the claims of error in a rehearing application. (Pub. Util. Code, § 1732; see also *Order Modifying Decision (D.) 11-12-053 and Denying Rehearing of the Decision as Modified* [D.12-08-046] (2012) \_\_ Cal.P.U.C.3d \_\_ at pp. 36-37 (slip op.) [rejecting claims not stated in the rehearing application itself].)

### III. CONCLUSION

For the reasons stated above, D.12-05-035 is modified to: (1) explain that the adopted pricing mechanism should account for all of the generator's costs, including environmental compliance costs; (2) delete the statement that the Commission seeks to pay generators the price needed to build and operate a renewable generation facility; (3) delete statements that imply that avoided costs under PURPA are based in part on avoided ratepayer costs; (4) correct statements regarding section 399.20(f)'s requirement that the tariff be available on a "first-come-first-served basis;" (5) clarify the reasons for declining to adopt a location or transmission adder; (6) delete the statement that the FiT program may be quickly subscribed; (7) clarify how the program's capacity is allocated and incrementally released; (8) delete statements that the MPR is based on a "market;" (9) clarify statements regarding the legal requirements for setting avoided cost and the holdings of the *FERC Clarification Order*; and (10) correct the statement that subscription in a two-month period can equal more than 100% of the initial capacity allocation for a product type. D.12-05-035 is also modified to correct various typographical errors. Rehearing of D.12-05-035, as modified, is denied.

**THEREFORE, IT IS ORDERED** that:

1. D.12-05-035 shall be modified as follows:
  - a. The third sentence of the second paragraph on page 2 is modified to replace "principle" with "principal."

- b. The last sentence on page 4 is modified to replace “an electric corporations” with “an electric corporation’s.”
- c. The last complete sentence on page 9 is modified to replace the title of the ALJ’s Ruling to “*ALJ’s Ruling Regarding Setting Schedule for Briefs on Implementation of Senate Bill 32.*”
- d. The first two sentences of section 3 on page 10 are modified to read:  
  
“In implementing the amendments to the § 399.20 FiT Program, we rely on federal law, specifically, avoided cost requirements under the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>17</sup> We also rely upon § 399.20 and state laws governing statutory construction.”
- e. The first sentence of section 3.1 on page 10 is modified to insert “the” before “Federal Power Act.”
- f. The last sentence of the second paragraph on page 11 is modified to replace “avoided costs pricing” with “avoided cost pricing.”
- g. The paragraph beginning with “Based on the *FERC Clarification Order...*” on page 12, which continues on page 13, is deleted and replaced with the following:  
  
“Based on the *FERC Clarification Order*, we determined in D.11-04-033 that we have a wide degree of latitude in setting the avoided cost. We apply the same logic for the § 399.20 FiT Program. Specifically, based on the FERC’s clarification, the Commission may adopt avoided costs differentiated for particular sources of energy that a utility must purchase. In addition, the Commission may adopt a multi-tiered avoided cost rate structure. These clarifications expand the pricing options the Commission can consider when determining the § 399.20 FiT Program price.”
- h. The last sentence on page 15, which continues on page 16, beginning with “Since the cross-reference to § 399.15...” is modified to read:

“Since the cross-reference to § 399.15 has been removed pursuant to SB 2 1X, electricity purchased under § 399.20 is no longer required to be tied to the MPR as it was calculated for purposes of the larger RPS Program.”

- i. Footnote 44 on page 29 is deleted in its entirety.
- j. The fifth sentence in the second paragraph on page 31, which states, “Instead, it reflects the costs of a different energy market, fossil fuels” is deleted.
- k. The last sentence in the second paragraph on page 31, which begins, “Now the renewable market is sufficiently robust...” is modified to read:

“Now the renewable market is sufficiently robust to serve as the point of reference for establishing the market price for small renewable projects rather than the very different benchmark used for the MPR, which is based on the costs of a combined-cycle natural-gas power plant.”

- l. The last sentence in the second paragraph on page 32, which begins, “In addition, the methodologies...” is modified to read:

“In addition, the methodologies used for these adders were generally based on avoided societal costs, and not avoided utility costs, and are therefore not the type of avoided costs permitted under PURPA.”

- m. The second, third, and fourth sentences in the first full paragraph on page 33, beginning with “As stated above, many of the proposed adders...” are modified to read:

“As stated above, many of the proposed adders are overly broad societal costs and not based on the avoided costs to utilities. In addition, these adders could increase the contract price above the market price of generation from eligible renewable energy resources and lead to overpayment. As discussed below, the FiT price calibrates to market prices and to market demand, which leads both to reasonable

ratepayer costs and prices that can work to stimulate market demand.”

- n. The last sentence on page 33, which continues on page 34, beginning with “In doing so, we must balance...” is modified to read:

“In doing so, we must balance a number of competing interests, and find that, at this time, unique prices for separate technologies are not required by state law or in the best interest to ratepayers.”

- o. The first full paragraph on page 34 beginning with “Regarding the state law issue...” is modified to read:

“Regarding the state law issue, the parties do not address the fact that § 399.20 does not specifically direct the Commission to account for the unique cost of each technology. The plain language of § 399.20 does not require that technology-specific costs be included in a FiT Program price methodology.”

- p. The second sentence in the third full paragraph on page 34 beginning with” While federal law, as discussed above...” is modified to read:

“While federal law, as discussed above, provides the Commission with the latitude to take into account state energy procurement requirements when establishing avoided costs, the state statute, as codified in § 399.20, does not require the Commission to consider technology-specific costs when determining the § 399.20 FiT Program price.”

- q. The first sentence in the first full paragraph on page 35 is modified to delete the word “an” before “administratively-determined calculations.”

- r. The first sentence in the fourth full paragraph on page 35, which starts, “Accordingly, we do not adopt technology-specific pricing...” is modified to read:

“Accordingly, we do not adopt technology-specific pricing as it is not required by § 399.20 and

does not advance our policy guidelines for implementing the § 399.20 FiT Program.”

- s. The first three sentences of the second paragraph of section 5.6 on pages 37-38, beginning with “We do not adopt other components...” are modified to read:

“We do not adopt other components of the Renewable FiT Staff Proposal, including the location adder or a transmission adder because we find these components, as proposed during the proceeding, to be inconsistent with existing law. Any location or transmission adder must be based on costs that are found to be actually avoided by the utilities. (18 C.F.R. § 292.304, subd. (a)(2); *FERC Clarification Order, supra*, 133 FERC ¶ 61,059, at P 31.) In this case, we agree with the concerns expressed by SCE and the other utilities, and find that the record does not support a finding that the location and transmission adders proposed during the proceeding represent actual costs that would be avoided by the utilities. (See, e.g., *Southern California Edison Company’s Reply Comments on the October 13, 2011 Renewable FIT Staff Proposal*, dated November 14, 2011, pp. 12-13; *Pacific Gas and Electric Company’s Comments on Staff Proposal Regarding the Implementation of Section 399.20*, dated November 2, 2011, pp. 17-19.)

- t. The third paragraph on page 39 beginning with “Our finding is based...” is modified to read:

“Our finding is based on the fact that the renewable market has evolved, and is now sufficiently robust to serve as the point of reference for the market price for small renewable projects. The discussion above at Section 5 fully addresses this matter.”

- u. The second full sentence on page 40, beginning with “Nevertheless, while not identical...” is deleted and replaced with the following:

“We address the disparity between the RAM and the § 399.20 FiT Program markets by adopting a price adjustment mechanism, described further in Section

6.4, which will enable the FiT price to be responsive to market conditions. We find that the adopted Re-MAT, which uses the RAM as a starting price and employs a price adjustment mechanism, establishes a market-based avoided cost for the § 399.20 FiT Program.”

v. The first and second sentences in the second paragraph on page 41 are both modified to insert “the” before “long-term market price.”

w. The second paragraph on page 42, which discusses environmental compliance costs, is modified to read:

“Section 399.20(d)(1) provides that the tariff shall provide for payment of, among other things, all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located. Re-MAT theoretically includes, as embedded within the starting price, general costs associated with producing renewable energy. As the Re-MAT should calibrate to the market price of the renewable energy, we find that the Re-MAT price should account for all of a generator’s costs, including the generator’s environmental compliance costs.”

x. The third sentence of section 6.3 on page 42, beginning with “Our decision reflects an effort...” is modified to read:

“Our decision reflects an effort to better capture the value provided by different product types, which should accurately reflect the value of the different technologies that produce these products.”

y. The last sentence in the first full paragraph on page 43, beginning with “This is a reasonable starting price...” is modified to delete the word “distributed” before “generation.”

z. Footnote 48 on page 43 is modified to replace “advice letter” with “advice letters.”

- aa. Footnote 50 on page 44 is modified to read:

*“Southern California Edison Company’s Program Implementation Proposal Pursuant to Section 399.20 Ruling Dated June 27, 2011, dated August 5, 2011, Appendix A Schedule MP FiT, Sheet 5, Special Condition #8 MP FiT Pricing and Cumulative Procurement Targets.”*

- bb. The first sentence in the second full paragraph on page 45, beginning with “The price adjustment will be triggered...” is modified to insert “at” before “least.”

- cc. The first sentence of the third full paragraph on page 47, beginning with “To guard against ratepayer exposure...” is modified to “all part of program” with “all or part of the program.”

- dd. The second sentence on page 48, beginning with “The condition for a price decrease...” is modified to read:

*“The condition for a price decrease is if subscription in a two-month period equals 100% of the initial capacity allocation for that product type.”*

- ee. The illustrations of price decreases on page 48 are all modified to replace “100% or more” with “100%.”

- ff. The first sentence on page 49 is modified to replace “we direct utilities” with “we direct the utilities.”

- gg. The second and third paragraphs on page 49, beginning with “To implement this directive...” is modified to read:

*“To implement this directive, each utility must divide the total program capacity by 12 and then assign one-third into each product type.*

*In the first adjustment period, i.e. Months 1-2, we require that each utility allocate a minimum of 3 MW to each product type. The same minimum obligation would apply to Months 25-26, if applicable. If dividing the total program capacity by 12 results in less than 3 MW being allocated to a product type per adjustment period, the utilities are to first allocate the*

minimum 3 MW per product type in the first adjustment period, and then equally allocate their remaining capacity among the three product types over the remaining 11 adjustment periods.”

- hh. Footnote 53 on page 49 is deleted.
- ii. The first sentence in the second full paragraph on page 52, beginning with “However, we expect the price adjustment mechanism...” is modified to replace “produce type” with “product type.”
- jj. The first sentence in the third full paragraph on page 52, beginning with “For this reason, at this point in time...” is modified to replace “§ 399.20(d)(3)” with “§ 399.20(d)(4).”
- kk. The last two full paragraphs on page 53 and the first full paragraph on page 54, beginning with “Turning now to the specific legislative directive...,” and associated footnotes 56 and 57, are deleted in their entirety and replaced with the following:

“Turning now to the specific legislative directive in § 399.20(d)(1) and consideration of an adder to reflect the cost of environmental compliance, a few parties submitted evidence on this topic. We find that much of this data reflects general environmental costs and not, as specified by the statute, the cost of environmental compliance.

With regard to environmental compliance costs, we find that an adder for these costs is unwarranted, as the Re-MAT price should adjust to account for these costs. The rationale for a market-based price is that all of the generator’s costs are included in the price because a generator would not bid something lower than its costs. In a market-based process, the seller determines the price it wishes to seek based on its understanding of the underlying project costs, and changes in those costs. (*Decision Adopting the Renewable Auction Mechanism* [D.10-12-048] (2010) \_\_\_ Cal.P.U.C.3d \_\_\_, p. 17 (slip op.)). In adopting the RAM, we found that a rational bidder would include all of its costs in its bid. (*Id.* at p. 85 [Finding of Fact 36].)

Given that all costs incurred by a generator are presumed included in a market-based price, we see no reason why environmental compliance costs should be treated differently from any other costs incurred by a generator. A generator should include all of its costs, including any environmental compliance costs, in its price for the Re-MAT. The Re-MAT price adjusts based on market conditions and, thus, should account for these costs. (See also, *Southern California Edison Company's Comments to Section 399.20 Ruling dated June 27, 2011*, dated July 21, 2011, p. 4 [market-based process would allow current and anticipated environmental costs to be included in the price]; *Clean Coalition Reply Comments on ALJ Ruling*, dated August 26, 2011, p. 31 [price adjustment mechanism could result in a price that includes environmental compliance costs].) Therefore, we find that the Re-MAT complies with the legislative directive in § 399.20(d)(1) regarding environmental compliance costs, and is also consistent with PURPA's requirements that rates for QFs be based on the utilities' avoided costs, rather than a generator's costs."

- ll. The second sentence in the second paragraph on page 58, beginning with "We further point out..." is modified to replace "legislation intent" with "legislative intent."
- mm. Footnote 66 on page 59 is modified to read: "§ 399.20(d)(4)."
- nn. The third to last sentence on page 60, beginning with "Similarly, we find today that Re-MAT..." is modified to replace "§ 399.20(d)(3)" with "§ 399.20(d)(4)."
- oo. The second paragraph on page 61, beginning with "Accordingly, we find..." is modified to replace "§ 399.20(d)(3)" with "§ 399.20(d)(4)."
- pp. Section 6.11 on pages 61 and 62 is deleted in its entirety and replaced with the following:

“Section 399.20(f) states that ‘[a]n electrical corporation shall make the tariff available ... on a first-come-first-served basis.’

Section 399.20(f) discusses the obligation of the utilities, and does not discuss the Commission’s authority to impose pricing, procurement, or other program requirements for the FiT. The Commission has broad authority over public utilities, including authority over the utilities’ resource portfolios and procurement planning, and in implementing the RPS Program. (See, e.g., Cal. Const., art. XII, § 6; Pub. Util. Code, §§ 399.11 et seq., 454.5, 701.) The Commission has the authority to act even in cases where there is no express statutory authorization so long as the additional power and jurisdiction the Commission exercises are cognate and germane to the regulation of public utilities, and do not contravene or disregard an express legislative directive. (Pub. Util. Code, § 701; *Consumer Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905-906; *Assembly v. Public Utilities Com.* (1995) 12 Cal. 4th 87, 103.) Therefore, the Commission is not restricted from adopting additional program requirements for the FiT, so long as the imposition of these requirements does not contravene other statutory requirements.

In order to comply with section 399.20(f), the utilities should make their respective tariffs, which incorporate any program requirements required by statute or by the Commission, available on a first-come-first-served basis. Among other things, the utilities’ tariffs must incorporate the pricing mechanism adopted pursuant to section 399.20(d). The utilities’ tariffs should also incorporate the requirement that an equal portion of their allotted capacity be assigned to the three product types, baseload, peaking, and as-available. We find that this program requirement is warranted based on the legislative directive in section 399.20(d)(2)(C) that the Commission take into consideration the value of different electricity products in establishing a pricing methodology for the FiT.”

- qq. The third sentence in the third full paragraph on page 64, beginning with” We do, however, find...” is modified to replace “encouraging load to locate near load centers” with “encouraging generation to locate near load centers.”
- rr. The second sentence of section 9 on page 67, beginning with “Under D.07-07-27...” is modified to insert “the” before “Commission’s § 399.20 FiT Program.”
- ss. The first two full sentences on page 76, beginning with “We are sensitive, however...” are deleted in their entirety.
- tt. The following sentence is inserted before the last sentence in the first paragraph on page 77:  
  
“Each utility is to subtract this capacity from its total capacity allocation prior to allocation among the three product types.”
- uu. The third sentence of the third paragraph of section 12.2 on page 77, beginning with “SCE suggests...” is modified to replace “each utilities” with “each utility’s.”
- vv. The fourth sentence in the second paragraph on page 80, beginning with “AECA’s recommendation” is modified to replace “biogas project” with biogas projects.”
- ww. The first paragraph on page 81, beginning with “Today we decline to adopt a set aside...” is deleted in its entirety and replaced with the following:

“Today we decline to adopt a set aside for any specific technology. As created by the Legislature, the § 399.20 Program is intended to encourage electrical generation from eligible renewable energy resources but there is no statutory provision that directs us to consider a set-aside for any particular technology. To the extent that there is no statutory requirement requiring technological set-asides for the § 399.20 Program, it is within our authority and discretion to determine how to implement the program. We decline to adopt technological set-asides at this time because it is not required by statute, and because, as with

technology-specific pricing discussed in Section 5.3, above, we find that technological-set asides are not consistent with our policy guidelines for the FiT Program.”

- xx. The third sentence of the second paragraph on page 81, starting with “In addition, it dedicates...” is modified to read:

“In addition, consistent with § 399.20(d)(2)(C), it dedicates a certain portion of the capacity allocation to each product type.”

- yy. The first sentence of the first full paragraph on page 90, beginning with “Regarding the type of information...” is modified to insert “the” before “§ 399.20 FiT Program.”

- zz. The second sentence in the first paragraph of Section 25 on page 105, beginning with “Solutions for Utilities seeks...” is modified to insert “the” before “§ 399.20 FiT Program.”

- aaa. The second sentence of footnote 96 on page 105 is modified to replace “R.06-03-027” with “R.06-05-027.”

- bbb. The first sentence of the third paragraph on page 106 is modified to replace “Clean Coalition’s petition for modification” with “Solutions for Utilities’ petition for modification.”

- ccc. FOF 3 on page 109 is modified to read:

“The MPR is a price based on the costs of a natural gas-fired electric plant, and not a renewable generator. The MPR reflects the costs of fossil fuels.”

- ddd. FOF 5 on page 109 is modified to read:

“The renewable market is sufficiently robust to serve as the point of reference for establishing the market price for small renewable projects rather than the MPR, which reflects the costs of a combined-cycle natural-gas power plant.”

- eee. FOF 6 on page 109 is modified to replace “ratepayer costs” with “utility costs.”

fff. FOF 15 on page 110 is modified to read:

“The Re-MAT price should increase or decrease based on market interest in a product type, which may be determined by how many projects execute contracts at a particular Re-MAT price.”

ggg. FOF 20 on page 111 is modified to replace “§ 399.20(d)(3)” with § 399.20(d)(4).”

hhh. FOF 21 on page 111 is deleted in its entirety and replaced with the following:

“There is no statutory provision requiring the adoption of pricing on a technology-specific basis.”

iii. FOF 22 on page 111 is deleted in its entirety and replaced with the following:

“A market-based price accounts for all of a generator’s costs, including environmental compliance costs.”

jjj. FOF 23 on page 111 is deleted in its entirety and replaced with the following:

“The location and transmission adders proposed during the proceeding do not represent actual costs that would be avoided by the utilities.”

kkk. FOF 33 on page 113 is modified to read:

“No statutory provision requires us to consider a set aside for a particular technology.”

lll. The second sentence of FOF 34 on page 113 is modified to read:

“In the interest of administrative efficiency, the two separate schedules should no longer be retained.”

mmm. COL 1 on page 115 is modified to read:

“In implementing the amendments to the § 399.20 FiT Program, we rely on federal law, specifically, avoided cost under PURPA, the language of § 399.20 and state laws governing statutory construction, and the policy guidelines adopted herein.”

- nnn. COL 2 on page 115 is modified to replace “avoided costs pricing” with “avoided cost pricing.”
- ooo. COL 3 on page 115 is modified to read:

“Based on the *FERC Clarification Order*, the Commission can determine a different avoided cost, differentiated for particular sources of energy based on state procurement requirements.”
- ppp. The first sentence of COL 7 on pages 115-116 is modified to replace “no longer tied to the MPR” with “no longer required to be tied to the MPR.”
- qqq. COL 13 on pages 116-117 is modified to read:

“The methodologies presented to determine certain adders, such as those based on technology specific generation, are largely based on general avoided societal costs, not avoided utility costs, and are therefore not the type of avoided costs permitted under PURPA.”
- rrr. COL 14 on page 117 is modified to delete “and not ratepayer costs.”
- sss. The second sentence of COL 15 on page 117 is modified to read:

“The plain language of § 399.20 does not require that technology-specific costs be included in a FiT Program price methodology.”
- ttt. COL 23 on pages 118-119 is modified to replace “renewable distributed generation” with “renewable generation.”
- uuu. COL 25 on page 119 is modified to replace “two month’s” with “two months’.”

vvv. COL 31 on page 119 is modified to replace “§ 399.20(d)(3)” with “§ 399.20(d)(4).”

www. COL 32 on page 120 is modified to read:

“In order to comply with § 399.20(f), the utilities should make their respective tariffs, which incorporate any program requirements required by statute or by the Commission, available on a first-come-first-served basis.”

xxx. COL 41 on page 121 is modified to read:

“There is no statutory requirement requiring technological set-asides for the § 399.20 Program. No set-aside (or carve-out) of capacity for specific technologies should be adopted at this time because it is not required by statute or consistent with our policy guidelines for the FiT Program.”

yyy. COL 56 is added as follows:

“Any location or transmission adder must be based on costs that are found to be actually avoided by the utilities.”

zzz. COL 57 is added as follows:

“§ 399.20(f) discusses the obligation of the utilities to offer their tariffs on a first-come-first-served basis, and does not discuss the Commission’s authority to impose pricing, procurement, or other program requirements for the FiT.”

aaaa. COL 58 is added as follows:

“The Commission has broad authority over public utilities, including authority over the utilities’ resource portfolios and procurement planning, and in implementing the RPS Program. The Commission has the authority to act even in cases where there is no express statutory authorization so long as the additional power and jurisdiction the Commission

exercises are cognate and germane to the regulation of public utilities, and do not contravene or disregard an express legislative directive.”

- bbbb. The third sentence of OP 6 on page 125, beginning with “This provision shall permit generators...” is modified to insert “in” before “the Commission’s Rules of Practice and Procedure.”
- cccc. The first sentence of OP 7 on page 125, beginning with “Within 90 days...” is modified to insert “the” before “Renewable Auction Mechanism.”
- dddd. The third sentence of OP 8 on page 126, beginning with “Such a provision...” is modified to insert “the” before “January 10, 2012 ALJ ruling.”
- eeee. The last sentence of OP 11 on page 127, beginning with “The Commission will review...” is modified to replace “the provision” with “these provisions.”

2. A conformed version of D.12-05-035, which incorporates all the modifications made in this order, is attached hereto as Attachment A.
3. Rehearing of D.12-05-035, as modified, is denied.
4. The District’s rehearing application is rejected for failing to meet the requirements of Public Utilities Code section 1732.

This order is effective today.

Dated January 24, 2013 at San Francisco, California.

MICHAEL R. PEEVEY  
President  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
CARLA PETERMAN  
Commissioners