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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 10, 2011)

INITIAL COMMENTS OF AGRICULTURAL ENERGY CONSUMERS ASSOCIATION REGARDING THE OCTOBER 13, 2011 RENEWABLE FIT STAFF PROPOSAL

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In accordance with the October 13, 2011 Administrative Law Judge's Ruling (1) Issuing Staff Proposal, (2) Entering Staff Proposal and Other Documents Into the Record, and (3) Setting Comment Dates (ALJ's Ruling), Agricultural Energy Consumers Association (AECA) files these Initial Comments. AECA is an incorporated nonprofit association. AECA represents the interests of agricultural and water pumping customers of electrical and gas utilities in California. At the present time, AECA's members include individual producers, processors, produce cooling operations, water agencies and member agricultural associations.[1] Many of AECA's members are interested in developing renewable energy – biogas – projects to add to the State's renewable portfolio and reduce greenhouse gas (GHG) emissions, *if* a workable Feed-in Tariff (FiT) program is adopted.

AECA reiterates its appreciation for the opportunity to provide input to the SB 32 FiT implementation process. While State policy continues to encourage biogas, the grim reality is that there are less than a dozen digesters in operation at California dairies. AECA's comments focus on ensuring that section 399.20 is implemented in a manner that promotes technology diversity, and does not exclude biogas or other emerging and renewable technologies, consistent with Legislative intent and State policy.

As called for in the ALJ's Ruling, AECA's comments follow the numbering in the October 13, 2011 Renewable FiT Staff Proposal (Staff Proposal). Because AECA proposes that the Commission take a step back to carefully consider alternatives to the Staff Proposal, AECA does not specifically state its support or opposition to each item in these Initial Comments.

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[1] The agricultural associations' members are not direct customers of the utilities but collectively represent thousands of agricultural customers.

Summary of Position

Governor Brown has set an ambitious goal of developing 12,000 megawatts (MW) of renewable distributed generation by 2020. To achieve this goal, Governor Brown encourages the California Public Utilities Commission (Commission or CPUC) or the Legislature to "implement a system of carefully calibrated renewable power payments (commonly called feed in tariffs) for distributed generation projects up to 20 megawatts in size," while "holding down overall rates [as] part of the design."[2]

The section 399.20 renewable FiT program provides an important opportunity to further California's efforts to develop a diverse portfolio of small renewable distributed generation projects. Toward this end, the section 399.20 FiT program is especially critical to the development of a commercial biogas industry in California. Unfortunately, as currently crafted, the Staff Proposal, does not (among other issues) offer "carefully calibrated renewable power payments" and, therefore, will not achieve the desired broad renewable energy diversity, especially as it relates to biogas (dairy and wastewater) in California.

AECA strongly recommends that the Commission provide additional time so that workable alternative avoided cost pricing proposals can be identified, workshopped and debated. A number of alternative pricing proposals have been suggested by various parties, but they have not received nearly the same level of consideration as the Staff Proposal. AECA continues to believe the development of separate prices for different renewable technologies, rather than product categories, is best suited to achieving the goals of the FiT program and fully consistent with longstanding State policy supporting renewable diversity, recent Federal Energy Regulatory Commission decisions regarding avoided cost prices, and Governor Brown's renewable distributed generation goals. Additionally, AECA, like many other parties in this proceeding, supports allocating a portion of program capacity for biogas projects.[3] That concept is not even mentioned in the Staff Proposal.

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[2] Jerry Brown, Governor 2010, *Jobs for California's Future*, p. 4 (available at: http://www.jerrybrown.org/sites/default/files/Jobs%20for%20California's%20Future.pdf).

[3] *Also see* the October 25, 2011 Reply Comments of The Utility Reform Network on the Order Instituting Rulemaking (R.11-10-003) at p. 6:

> TURN believes that support for dairy digesters and other small-scale projects that export electricity should occur through dedicated electric procurement mechanisms that establish quantity targets, incorporate competitive auctions, and offer long-term power purchase agreements. These features have been the central elements of the existing RPS program and are the most efficient strategies for promoting

AECA appreciates the hard work staff has put into the Staff Proposal. However, AECA believes that as currently proposed, the Staff Proposal is fatally flawed for a number of reasons, including but not limited to, the following:

- The Staff Proposal lacks any mechanism for ensuring and development of and participation by a diverse array of renewable energy technologies.
- The Staff Proposal provides the investor owned utilities with too much discretion and control.
- The Staff proposal fails to recognize and value the unique renewable energy benefits of biogas projects.

While AECA is on record opposing further delays in implementation of SB 32, AECA strongly believes it is more important that the CPUC get it right the first time, rather than adopt an unworkable proposal that will not achieve the State's goals for renewable distributed generation generally, and biogas particularly, and that will result in further delays in deployment of diverse renewable generation over the long-term. Additional time will allow the Commission to initiate efforts to develop technology differentiated rates and set up reasonable procurement goals for each technology. Only then can the Commission ensure California realizes the broad public policy goal of developing a diverse array of distributed renewable energy projects under the FiT program.

VI. Guiding Principles

In general, the Guiding Principles appear to be designed to lead to development of a worthwhile FiT program.[4] The Commission should ensure that any FiT program in fact meets program principles. In this regard, it is critical that the Commission carefully consider and appropriately weigh *each* of the Guiding Principles, an admittedly complex task. As described in these comments, AECA is very concerned that the Commission give appropriate weight to Principle 11, which proposes to "[e]nsure *all* RPS-eligible renewable resources are able to participate."[5]

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technologies that are not competitive with more mature renewable energy alternatives. Awarding short-term subsidies without a robust procurement mechanism may prove highly inefficient, costly, and ineffective.

4 Staff Proposal, p. 6-7.

5 *Id*. at 7 (emphasis added).

VII. Program Elements of Staff Proposal

a. Pricing

The Staff Proposal correctly recognizes that "[t]he FIT price must be determined to be an avoided cost under PURPA."[6] Notably, this does not require a one-size fits all approach to a FiT price. Recent FERC decisions have underscored that the Commission has broad authority and latitude to implement a "multi-tiered avoided cost rate structure consistent with the avoided cost rate requirements set forth in PURPA and [FERC's] regulations."[7] As recognized by FERC, such pricing mechanisms can be specific to a generation technology or class of technologies, such as where a State mandate, like SB 32, provides for a utility to procure specific resources. Consistent with these determinations, the Commission has clear authority to establish multi-tiered avoided cost rates to appropriately value the avoided costs of the different technologies eligible to participate in the section 399.20 FiT, including biogas.

AECA agrees with the Staff Proposal that "[t]he renewable market is the appropriate market segment to use in determining the Renew FIT price since renewable FIT generators are avoiding procurement of other renewable generators."[8] AECA disagrees that the prices set in the upcoming Renewable Auction Mechanism (RAM) auctions should serve as the basis for determining the base price for the small renewable FiT. AECA has identified the following fatal flaws associated with importing the RAM price into the section 399.20 program.

First, the RAM price is not an appropriate benchmark for a small renewable FiT program. The RAM will include much larger projects (up to 20 MW) with potential for far greater economies of scale than smaller (up to 3 MW) FiT projects. Moreover, the RAM bids may be significantly influenced in the short-term by the continued availability of federal incentives, in particular the US Treasury 1603 cash grant and accelerated depreciation, thereby resulting in an artificially low benchmark price. These federal incentives will not be available for small biogas projects advanced in 2012 and, therefore, such projects will not be economically viable under an artificially low RAM-based price. The first RAM auction has yet to occur, so there is ***no*** history

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6 Staff Proposal, p. 8.

7 *California Public Utilities Commission*, 134 FERC ¶ 61,044 at paragraph 30 (2011); *see also California Public Utilities Commission*, 132 FERC ¶ 61,047 (2010) and *California Public Utilities Commission*, 133 FERC ¶ 61,059 (2010). AECA agrees that sellers that are subject to FERC jurisdiction must register as QFs; nonjurisdictional public entity sellers need not register as QFs unless they voluntarily choose to do so.

8 Staff Proposal, p. 8.

or experience regarding RAM's success or failure in achieving a diverse renewable energy project mix. The Commission cannot risk the FiT program on "blind faith" in an entirely different procurement program that was not designed to implement section 399.20 and which has not been tried and tested.

Second, AECA does not expect a large number of dairy or wastewater biogas projects, if any, to bid into the RAM procurement program. As a result, the RAM likely will provide no effective pricing benchmarks for biogas projects.

Third, the investor owned utilities are afforded substantial discretion and control over the RAM process, and by default under the Staff Proposal, over the section 399.20 FiT process, as well. Under the RAM, the utilities control the amount of procurement in each of the three renewable product categories (baseload, peaking as-available, and non-peaking as-available). Under the RAM, the utilities also have the ultimate ability to reject any and all bids submitted in a category. AECA has little faith that the utilities will not utilize this control to limit opportunities for technologies which presently are higher cost, such as biogas, even though such technologies provide substantial environmental and GHG emission reduction benefits.

Fourth, the Staff Proposal will likely further benefit technologies that have already proven to be successful under the existing FiT program, at the expense of other important technologies that the State is seeking to encourage, such as dairy and wastewater biogas projects. For example, PG&E has suspended further contract additions to its Small Renewable Generator (E-SRG) wait list, since it is already fully subscribed, largely by solar projects.[9] AECA remains concerned that unless separate avoided cost prices and procurement targets are established by technology type, biogas and other less commercially developed technologies will be disadvantaged or excluded entirely under the Staff Proposal. The result of the current Staff Proposal will likely be a continued flurry of highly incentivized solar projects, which will effectively eliminate the opportunity to nurture important alternative renewable energy technologies, such as biogas.

Fifth, by limiting renewable energy types to baseload, peaking as-available and non-peaking as-available, the Staff Proposal fails to recognize the full benefits of biogas, which can also be peaked and stored. Dairy biogas projects can store one to three days of biogas under a

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9 *See, e.g.*, http://www.pge.com/b2b/energysupply/wholesaleelectricsuppliersolicitation/standardcontractsforpurchase/.

lagoon cover. This stored energy can be utilized as baseload, peak power when desired or even as non-peaking power as desired. The valuable attributes associated with this unique storage ability of biogas projects are completely lost in the Staff Proposal.

Conclusion

For the reasons stated above, AECA strongly recommends that the Commission change course and seek to develop technology differentiated rates and technology specific procurement goals for the FiT program. The current Staff Proposal is fundamentally flawed and will not result in a fair, efficient and balanced procurement program that "ensure[s] all RPS-eligible renewable resources are able to participate."

AECA believes that to "get it right" the Commission must provide additional time to identify, consider and adopt more appropriate pricing proposals.

DATED: November 2, 2011 DAY CARTER & MURPHY LLP

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VERIFICATION

I am the attorney representing Agricultural Energy Consumers Association (AECA) in this proceeding and am authorized to make this verification on behalf of AECA. I have read the attached Initial Comments of Agricultural Energy Consumers Association Regarding the October 13, 2011 Renewable FiT Staff Proposal, dated November 2, 2011. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 2, 2011, at Sacramento, California.

/s/ Ann L. Trowbridge

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