



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

**FILED**

04-16-12

04:59 PM

Order Instituting Rulemaking to Continue  
Implementation and Administration of  
California Renewables Portfolio Standard  
Program.

Rulemaking 11-05-005  
(May 5, 2011)

**REPLY COMMENTS OF FUELCELL ENERGY, INC.  
ON PROPOSED DECISION OF ALJ DEANGELIS**

Lynn M. Haug  
Ellison, Schneider & Harris L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
(916) 447-2166 Telephone  
(916) 447-3512 Facsimile  
[lmh@eslawfirm.com](mailto:lmh@eslawfirm.com)

April 16, 2012

Attorneys for FuelCell Energy, Inc.

**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  
(May 5, 2011)

**REPLY COMMENTS OF FUELCELL ENERGY, INC.  
ON PROPOSED DECISION OF ALJ DEANGELIS**

In accordance with Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, FuelCell Energy, Inc. (“FCE”) submits the following reply comments addressing certain issues raised in opening comments on the Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1X and Denying Petitions for Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc. (“Proposed Decision”).

Numerous parties have noted in opening comments that the new “Re-MAT” pricing proposal: 1) is not a feed-in tariff; 2) does not comply with explicit requirements of Public Utilities Code Section 399.20; and 3) will not accomplish the intent of SB 32, which is to

[R]ecognize the environmental attributes of the renewable 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.<sup>1</sup>

and

[E]ncourage the generation of electricity from eligible renewable energy resources strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers.<sup>2</sup>

---

<sup>1</sup> Cal. Stats. Ch. 328 (2009), Section 1(e).

<sup>2</sup> Id., Section 1(f).

FCE encourages the Commission to seriously reconsider its decision to opt for a pricing scheme based on RAM auction contracts signed by mostly larger solar developers located in southern California. As the PD itself acknowledges, the proposed ReMAT base price does not represent the avoided cost of <3 MW baseload DG projects. And it is clear from the PD and from comments that the goal of administrative simplicity - the ostensible reason for rejecting a true feed-in tariff – is not likely to be achieved through the complicated Re-MAT price adjustment process.

FCE is not optimistic that the Re-MAT program will facilitate or accelerate the deployment of baseload digester gas projects, as intended by the Legislature. However, if the Commission adopts the Re-MAT and actually wants to give baseload digester gas projects a place in the program, it will have to ensure through program design that this is possible.

First, the Commission should explicitly include resource diversity as an objective of the program. FCE agrees with Sustainable Conservation and other parties that have pointed out the need to explicitly commit to program diversity, particularly in light of the fact that the existing program has utterly failed in this regard.<sup>3</sup> Establishing resource diversity as a Policy Guideline alongside other program goals will provide direction in assessing the program’s progress and addressing issues as they arise.

Second, the Commission should, as proposed, allocate capacity evenly between the three product “buckets.” FCE agrees with PG&E that this allocation should be continued for at least two years, particularly given the assumption that pricing for projects in the baseload category will not be adequate to encourage participation until some point months after initiation of the program.<sup>4</sup> However, as discussed in FCE’s opening comments, even after two years re-

---

<sup>3</sup> SusCon Comments at 10; CWCCG Comments at 3; AECA Comments at 3.

<sup>4</sup> See PG&E Comments at 6-8.

allocation between buckets should only be authorized after the first program review has taken place and any corrective measures to ensure diversity implemented.

The Commission should reject recommendations to eliminate the PD's allocation of capacity between products,<sup>5</sup> and proposals to prematurely re-allocate program capacity reserved for baseload projects.<sup>6</sup> Parties that point to the failure of the RAM and the existing Section 399.20 program to facilitate meaningful participation by baseload projects as justification for effectively excluding those projects from the new program entirely miss the point. SB 32 was intended to help address obstacles that have previously prevented entire classes of projects from participating in the existing feed-in tariff. The fact that digester gas projects have for all practical purposes been shut out of the existing program and the RAM is exactly why the Commission should take pains to make a place for them now. As discussed in FCE's opening comments, if many projects in one category are signing contracts and projects in another category are not, it means the Commission needs to take appropriate steps to maintain program diversity, *not* re-allocate that program capacity in a manner that makes diversity permanently impossible.

Dated: April 16, 2012

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_

Lynn Haug  
ELLISON, SCHNEIDER & HARRIS, LLP  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 94816  
916-447-22166  
[lmh@eslawfirm.com](mailto:lmh@eslawfirm.com)

Attorneys for FuelCell Energy, Inc.

---

<sup>5</sup> SEIA Comments at 13; SCE Comments at 5-6.

<sup>6</sup> DRA Comments at 4-6.

