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

REPLY COMMENTS OF RENEWABLES 100 POLICY INSTITUTE ON THE PROPOSED 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

April 16, 2012

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I. Introduction

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), the Renewables 100 Policy Institute (hereafter referred to as "the Institute") hereby submits these reply comments concerning the proposed *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* issued March 20, 2012 (the "Proposed Decision" or "PD").

The Renewables 100 Policy Institute is a non-profit organization that aims to study and advance the global shift to renewable energy. Our team has experience designing feed-in tariff (FIT) policies worldwide, including Germany's.

II. Agreement with Comments that the PD does not sufficiently differentiate an FIT from a RAM.

SDG&E comments that the proposed Re-MAT "is an auction, just of a different type (than the existing RAM). Instead of an ascending/descending clock auction where the price changes minute-by-minute, here the clock auction price change is month-by-month with the price being set if there are takers at that price."[1] CEERT similarly comments that the "Re-MAT really is still just a RAM for 3 MW and below projects."[2] CEERT and others add that the Proposed Decision's failure to distinguish between a RAM and an FIT ignores Commission precedent set in Decision (D.) 10 – 12 – 048.[3] SDG&E further concludes that the Re-MAT essentially contradicts federal legislative direction, i.e it "is not an avoided cost consistent with FERC's recent ruling."[4] The Institute agrees with these flat contradictions to the Proposed Decision's claims that it implements a feed-in tariff based on avoided costs, per federal and state law. We urge the Commission to correct this basic error and follow legislative direction to create a feed-in tariff, not an auction.

III. Agreement with Comments by multiple parties that the Proposed Decision to base the FIT pricing on RAM will insufficiently attract small projects and a diverse range of eligible technologies that to be encouraged, per state law, and are important to grid stability.

CALSEIA states that the Proposed Decision's RAM based pricing methodology "does not accurately reflect the value to the grid of smaller projects."[5] CEERT and others point out that with respect to biogas specifically, the results of the November 2011 RAM show that no biogas contracts were awarded, which demonstrates that

1 SDG&E PD Comments, p. 6

2 CEERT PD Comments, p. 11

3 e.g. CEERT PD Comments, p. 2

4 SDG&E PD Comments, p. 7

5 CALSEIA PD Comments, p. 5

RAM based pricing fails to attract that entire technology type.[6] SCE is similarly "particularly concerned that there will not be a sufficient number of projects and sponsors in the baseload and non-peaking-as-available categories."[7] The Institute agrees with these concerns. Our recommendation is to discard RAM based pricing, which we think is fundamentally flawed, in favor of pricing based on a thorough survey of the "*long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.*" This survey should be transparent, include performance and volume delivery data, and seek feedback loops regarding all eligible renewable energy technologies. The pricing should be *"multi-tiered,"* taking into full consideration differences found in the aforementioned costs, so as to "*encourage electricity generation from eligible renewable energy sources*," meaning all of them, not just a select few. Contrary to the Commission's assertion that this is too administratively complex, similar processes have been successfully undertaken in many locations around the world, and there is no good reason that California cannot rise to the same standard of best practice. This assertion also frankly appears disingenuous, given the extreme administrative complexity of managing the pricing mechanism in the Proposed Decision.

IV. Agreement with Comments that PD fails to implement Section 399.20's mandate to determine a market price that includes "*all current and anticipated environmental compliance costs* ."

Several parties, including CEERT, Sustainable Conservation, and Agriculture Energy Consumers Association (AECA), made the point that the Proposed Decision ignores the legislative requirement to implement these principles into the FIT program pricing. Heightening this concern is the Proposed Decision's reasoning that environmental compliance costs were omitted from the FIT pricing because "no party presented evidence that their proposals specifically addressed" them. Sustainable Conservation expresses several parties' view, including the Institute's, that for the Commission to say "that the parties, rather than the Commission, had the responsibility to establish environmental compliance costs is to stand the law on its head." To the contrary, the Commission should exercise its ability and authority to request such specific data from parties and incorporate data on environmental compliance costs into the FIT pricing, per state law.

V. Agreement with several parties' Comments that the Proposed Decision's pricing adjustment structure is overly complex.

Among the many parties expressing this concern, PG&E specifically comments: "The FIT Program envisioned in the PD creates significant administrative challenges if changes were to occur monthly."[8] SEIA additionally states that "the complexity which is embedded in the adjustment mechanism which is proposed

6 See, e.g. CEERT PD Comments, AECA PD Comments, Sustainable Conservation PD Comments
7 SCE PD Comments, p. 5
8 PG&E PD Comments, p. 2

by the PD is clearly inconsistent with a FiT program, which by definition is 'simple and streamlined.' Such a mechanism will no doubt create continual market confusion, may render project finance impossibly complex, and discourage participation in the program."[9]

The Institute shares these concerns. Proposals for frequent adjustments, including the potentially monthly adjustment put forth in the Proposed Decision, are generally advocated as cost containment measures to protect ratepayers. Where constant changes are made, however, FITs become prone to speculation, boom and bust cycles, and uncertainty that discourages investors and sets the program up to fail. It is, in fact, therefore highly unusual for an FIT program to make tariff changes more often than every 1-4 years and recommended by the investment community to not make changes more often than every 2 years.[10] Where more frequent adjustments to tariffs are made or being proposed, like has been lately seen in Germany and Spain, this is generally in response to mass scale of uptake and has typically only applied to solar PV. The reason is PV's rapid and steep price decline in recent years, which is widely attributed at the source to the successful implementation of the European FITs, especially Germany's. It is worth noting that frequent cuts to PV tariffs are not only controversial, but prone to actually higher costs and lawsuits.[11]

This sort of consideration of regular tariff degressions is virtually irrelevant, however, in a program as small as SB 32. To put things in perspective, California's new FIT program will have a 750 MW cap; Germany, which has roughly twice the population of California, installed 75,000 MW of just solar PV last year alone and about the same amount the year before, along with many more MWs of biogas, wind, etc. The rate impact of California's tiny FIT cannot compare. The real concern in California presently should be the costs of a failed program, in terms of wasted administrative resources, industry instability, investor uncertainty, political tensions, and societal and financial costs of continuing to fall behind on renewable energy targets. To promote a program that is as robust as possible within the very small caps set by SB 32, the Institute strongly recommends setting the price according to a comprehensive survey as described above in this document and then adjusting the pricing no more regularly than every two years.

VI. Response to Comments that the Proposed Decision's pricing structure is vulnerable to gaming.

For instance, CALSEIA astutely warns that "a single low-cost project sponsor could easily take over the entire program by simply metering out their project applications at a rate of one per month."[12] Moreover, SCE correctly writes: "If sellers know that the number of eligible projects and sponsors for a product type is

9 SEIA PD Comments, p. 10

10 See pp. 20, 38 *Paying for Renewable Energy: TLC At the Right Price*, DB Climate Change Advisors; 2009

11 *Cuts to Solar FITs Proposed In Germany,*Renewables Internationa February 24, 2012 http://www.renewablesinternational.net/cuts-to-solar-fits-proposed-in-germany/150/510/33184/

12 CALSEIA PD Comments, p. 6

hovering around a minimum threshold, and there is a large amount of capacity available for that category, they may hold out for a higher price than they need because of the lack of competition."[13] The vulnerability to gaming of bidding mechanisms to arrive at FIT pricing is well known. It is therefore recommended against by international leading authorities on FIT design.[14] Instead, the Commission should adopt a price discovery methodology based on the survey method previously described.

VII. Agreement with CEERT, AECA and others that technology-specific pricing is required by state law as expressed in Section 399.20, supported by federal law, and essential to ensuring SB 32 FIT program viability.

The Proposed Decision claims: "While federal law...provides the Commission with the latitude to take into account the state's legislative energy procurement mandates when establishing avoided costs, the state statute, as codified in Section 399.2, does not direct the Commission to consider technology-specific costs when determining the Section 399.20 FIT Program price." (PD, p. 35) In contrast, CEERT, echoing several party comments, states that "supporting a FIT pricing structure 'differentiated according to resource type'" is, in fact, "implementation of Section 399.20 consistent with its *requirements*." (CEERT PD Comments, p. 12)

The Institute agrees with CEERT. The plain language of Section 399.20 directs the Commission to encourage electrical generation from eligible renewable energy resources. It does not direct the Commission to exclude eligible resources. However, the Re-MAT clearly does, as the pricing mechanism does not target small projects nor projects from all eligible resources, such as biogas, as previously described.

Section 399.20 also mandates that in implementing the FIT program, the Commission

"establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with an electric generation facility, in consideration of...The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities." (d. (2) B)

It is virtually impossible to ensure the FIT program does not exclude eligible technologies differentiated tariff pricing administratively determined for each technology. This is due to the simple fact that the various eligible technologies 1) are at different stages of maturity regarding their ability to economically compete and 2) involve different "long-term ownership, operating, and fixed-price fuel costs." CEERT rightly warns that without "technology-specific" pricing, the Re-MAT "will suffer from the same shortcomings as the RAM."[15]

VIII. Agreement with Comments that the PD wrongly limits the FIT program's available MW.

CALSEIA, CEERT, and others express concern that the Proposed Decision restricts "the overall

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13 SCE PD Comments, p. 6

14 p. 20, *Paying For Renewable Energy: TLC At the Right Price,* DB Climate Change Advisors; 2009

15 CEERT PD Comments, p. 11

program size to 750 MWs *less* the existing 250 MW in the existing AB1969 Program."[16] CALSEIA calculates the Proposed Decision would increase PG&E's allocations only slightly, while actually reducing SCE's allocations - "surely not what the Legislature intended."[17] The Institute agrees with CEERT that " both tariffs should remain in place, with the existing AB 1969 tariff set at a 250 MW cap and the new Renewable FIT tariff set at the additional 750 MW cap."[18]

IX. We strongly disagree with SDG&E's proposal to allow utilities to withhold reasons for contract rejections from the public.

It is reasonable to conclude that the intent of the Section 399.20's confidentiality clause - which specifically cites, although is not limited to, "address information," is to protect the privacy of the owner or operator, not to withhold information from the public that is as potentially valuable a learning tool – along with being as strong an assurance of above-board decision making - as reasons for rejecting a contract.

X. We oppose SCE's and PG&E's FIT price cap proposals.

PG&E's price cap is arbitrary. SCE recommends a price cap based on their SPVP program; however, it is unclear to what extent that program actually affected cost effective solar installation, especially given over half of the 29 PPAs submitted for CPUC approval were slated to use now bankrupt Solyndra technology.[19]

XI. PG&E's proposal to include emerging technologies should include a specific list.

XII. We strongly oppose SCE's request that utilities be permitted to suspend all or part of the program if they suspect gaming.

This would excessively broaden authority over the program to the IOUs and destabilize the program.

XIII. Response to Comments that SB 32 pricing should incorporate the locational benefits of small, distributed renewable power projects.

We agree with numerous parties on this point and think SEIA's recommendation is reasonable: "The PD should be modified to increase the SB 32 price by the distribution loss factor appropriate to the secondary or primary distribution voltage at which the SB 32 project is interconnected."[20]

Respectfully submitted,

DIANE MOSS
/s/ Diane Moss
Founding Director, Renewables 100 Policy Institute
Dated April 16, 2012

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16 CEERT PD Comments, p. 2
17 CALSEIA PD Comments, p. 3
18 CEERT PD Comments, p. 15
19 SCE's Advice Letters to the Commission dated October 29, 2010 and May 16, 2011
20 SEIA PD Comments, p. 8

VERIFICATION

I am Founding Director of Renewables 100 Policy Institute and am authorized to make this verification on its behalf. I have read the foregoing

REPLY COMMENTS OF RENEWABLES 100 POLICY INSTITUTE ON THE PROPOSED 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

and am informed and believe that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of April 2012 at Malibu, California.

/s/ Diane Moss

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By: Diane Moss