

**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  
(Filed May 5, 2011)

**REPLY COMMENTS OF SILVERADO POWER LLC 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 OF DECISION 07-07-027 BY  
SUSTAINABLE CONSERVATION AND SOLUTIONS FOR UTILITIES, INC.**

KEYES, FOX & WIEDMAN LLP  
Erica M. Schroeder  
436 14th Street, Suite 1305  
Oakland, CA 94612  
Telephone: (510) 314-8200  
E-mail: [eschroeder@keyesandfox.com](mailto:eschroeder@keyesandfox.com)

Attorney for  
SILVERADO POWER LLC

April 16, 2012

## TABLE OF CONTENTS

I.	The Commission Should Require Projects to Have Independent Interconnection Requests Rather than Restricting Their Physical Location to Address Concerns About “Daisy-Chaining.” .....	2
II.	The Commission Should Clarify Treatment of Generators Currently on Waitlists for § 399.20 Programs, Such as the SCE CREST Program, as Suggested by Silverado Power in Opening Comments. ....	4
III.	The Commission Should Eliminate the Prohibitions on Utilization of the Transmission System, and New Transmission Infrastructure and Network Upgrades, While Maintaining the Distribution System Interconnection Requirement to Ensure that Systems Are “Strategically Located.” .....	5
IV.	The Commission Should Extend the Online Date Requirement for FiT Systems to 24 Months with a 6-Month Extension for Regulatory Delays.....	6
V.	The Commission Should Reject CALSEIA’s Suggestion to Include a Seller Concentration Cap for the Reasons Given in the Proposed Decision. ....	7
VI.	The Commission Should Reject the IOUs’ Suggestions Related to § 399.20(l) and the FiT Contract Termination Provisions, and Maintain the Proposed Decision’s Narrow Interpretation of § 399.20(l).....	7
VII.	The Commission Should Adopt SCE’s Suggestion to Allow Interconnection under Both the Rule 21 and WDAT Interconnection Procedures Even After a Final Decision regarding Rule 21 Tariff Reform Is Issued. ....	8
VIII.	The Commission Should Make the New FiT Program Rules Effective Only upon Final Commission Approval of the FiT PPA, Which Should Be Subject to Tier 2 or 3 Review. ...	9
IX.	Conclusion .....	9
	VERIFICATION.....	12
	APPENDIX: PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW .....	13

**TABLE OF AUTHORITIES**

**STATUTES**

Cal. Pub. Utils. Code § 399.20 ..... passim

**OTHER AUTHORITIES**

CALSEIA, Opening Comments on Proposed Decision (April 9, 2012) ..... 7

Clean Coalition, Opening Comments on Proposed Decision (April 9, 2012)..... 3, 4, 5

County Sanitation Districts of Los Angeles County, Opening Comments on Proposed Decision (April 9, 2012)..... 5, 6

CPUC, D.10-12-048, *Decision Adopting the Renewable Auction Mechanism*, R.08-08-009 (Dec. 17, 2010)..... 7

CPUC, Draft Resolution E-4489 (issued March 20, 2012) ..... 6, 7

CPUC, *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 Ix and Denying Petitions For Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc.*, R.11-05-005 (March 20, 2012). ..... passim

FERC Order No. 2003-A, *Standardization of Generator Interconnection Agreements and Procedures*, Docket No. RM02-1-001 (March 5, 2004) ..... 6

IREC, Opening Comments on Proposed Decision (April 9, 2012) ..... 5

PG&E, Opening Comments on Proposed Decision (April 9, 2012)..... 6, 8

Placer County Air Pollution Control District, Opening Comments on Proposed Decision (April 9, 2012)..... 5

SCE, Opening Comments on Proposed Decision (April 9, 2012)..... 8

SDG&E, Opening Comments on Proposed Decision (April 9, 2012)..... 6, 7, 8

SEIA, Opening Comments on Proposed Decision (April 9, 2012) ..... 4, 5, 6

Sierra Club, Opening Comments on Proposed Decision (April 9, 2012)..... 5

Silverado Power LLC, Opening Comments on Proposed Decision (April 9, 2012) ..... passim

*Silverado Power’s Brief on Implementation of Senate Bill 32*, R.-08-08-009 (March 7, 2011) .... 8

Sustainable Conservation, Opening Comments on Proposed Decision (April 9, 2012) ..... 5

**RULES**

CPUC, Rules of Practice and Procedure, Rule 14.3 ..... 1

**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)

**REPLY COMMENTS OF SILVERADO POWER LLC 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 OF DECISION 07-07-027 BY  
SUSTAINABLE CONSERVATION AND SOLUTIONS FOR UTILITIES, INC.**

On March 20, 2012, the Commission issued a *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 of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc.* (Proposed Decision). On April 9, 2012, Silverado Power LLC (Silverado Power)<sup>1</sup> submitted opening comments on the Proposed Decision addressing four issues: (1) “daisy-chaining” of projects; (2) the transition of presently queued generators to the new feed-in tariff (FiT) rules; (3) the definition of “strategically located”; and (4) the online date viability criterion.

Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, Silverado Power respectfully submits this reply to opening comments submitted by parties regarding the four issues identified above. In addition, we address three additional issues raised by parties in

---

<sup>1</sup> Silverado Power is engaged in the full lifecycle of utility-scale solar projects—from site acquisition through physical plant development, ownership and operation. Silverado Power has over 2,500 megawatts of utility-scale projects currently under development in California and the western United States.

opening comments: (1) we oppose the suggestion of a 10-percent seller concentration cap; (2) we support maintaining a narrow interpretation of § 399.20(1) related to FiT power purchase agreement (PPA) termination; and (3) we support the suggestion to allow FiT project interconnection under both the Rule 21 and the Wholesale Distribution Access Tariff (WDAT), even after a final decision related to Rule 21 tariff reform is issued in Rulemaking (R.) 11-09-011. Finally, because opening comments made clear that many of the issues addressed in a final decision will need to be reduced to contract terms to be implemented effectively, Silverado Power recommends that the Commission make the new program rules effective only upon final Commission approval of the FiT PPA, which we believe should be subject to Tier 2 or 3 review given how critical its provisions will be to the success of the FiT program.

**I. The Commission Should Require Projects to Have Independent Interconnection Requests Rather than Restricting Their Physical Location to Address Concerns About “Daisy-Chaining.”**

As stated in our opening comments, Silverado Power believes that there are substantial ratepayer benefits from project co-location, including cost-savings related to construction, permitting and other project development costs. We believe these co-location benefits can be captured while still complying with the three-MW project size restriction if the Commission prohibits “daisy-chaining” by requiring projects to have independent interconnection requests as the sole criterion.<sup>2</sup>

In addition, while we disagree with the Clean Coalition’s position supporting the physical location restriction on projects to prevent daisy-chaining, we agree with the Clean Coalition’s concerns related to giving investor-owned utilities (IOUs) authority to deny a tariff request

---

<sup>2</sup> See Silverado Power Opening Comments at 2-4.

pursuant to California Public Utilities Code § 399.20(n)<sup>3</sup> if a project “appears to be part of a larger overall installation by the same company or consortium in the same general location.”<sup>4</sup> Silverado Power agrees that this authority is “far too broad and undefined,” and that it gives IOUs excessive discretion with regard to denying projects.<sup>5</sup> Moreover, we believe this highlights an inherent problem with using physical location as the basis for preventing daisy-chaining. Specifically, Silverado Power notes that there is not a clear definition for “contiguous piece of property” in the statute or the rules, which in turn leaves interpretation of this provision up to the IOUs’ discretion.

As stated in our opening comments, Silverado Power proposes that the Commission require projects to have independent interconnection requests rather than specifying projects’ physical location to determine whether a project meets the three-MW size cap. This aligns with the technical considerations related to interconnection identified in §§ 399.20(b)(2) and (3), and §§ 399.20(n)(2) and (3). Furthermore, looking to a project’s interconnection request to determine eligibility within system size limits better aligns with the Proposed Decision’s approach for determining whether projects are “strategically located”<sup>6</sup> and whether a project has met threshold viability requirements,<sup>7</sup> both of which are tied to interconnection. We urge the Commission to adopt a similar approach with regard to daisy-chaining, and eliminate the vague and subjective physical property-based test.

---

<sup>3</sup> All future section references are to the California Public Utilities Code unless stated otherwise.

<sup>4</sup> Clean Coalition Opening Comments at 22.

<sup>5</sup> *Id.*

<sup>6</sup> Proposed Decision at 60-63.

<sup>7</sup> *Id.* at 63-65. Specifically, the Proposed Decision would require projects to have a completed system impact study or Phase I study, or have passed the Fast Track screens or supplemental review. *Id.* at 64.

## **II. The Commission Should Clarify Treatment of Generators Currently on Waitlists for § 399.20 Programs, Such as the SCE CREST Program, as Suggested by Silverado Power and Others in Opening Comments.**

As the Clean Coalition, the Solar Energy Industries Association (SEIA), and Silverado Power noted in opening comments, the Proposed Decision does not discuss treatment of generating facilities currently on waitlists for § 399.20 programs, such as SCE's CREST program.<sup>8</sup> As our opening comments indicate, Silverado Power agrees with the Clean Coalition that the transition of presently queued generators should allow these generators to preserve their queue positions held in existing programs.<sup>9</sup> Silverado Power believes, however, that the Clean Coalition's proposal does not sufficiently address the problem. In addition to giving presently queued generators priority in the revised FiT program, we also urge the Commission to exempt these generators from certain of the new FiT rules.<sup>10</sup>

Furthermore, Silverado Power notes that the first-come-first-served provision in the statute supports our position with respect to the transition of presently queued generators to the revised FiT.<sup>11</sup> In discussing the application of this provision to the proposed pricing regime, the Proposed Decision indicates that "this provision functions to restrict the Commission from creating program requirements that interfere with the first-come-first-served requirement as it applies to the program as a whole."<sup>12</sup> In other words, projects that have already applied for FiT capacity and are waitlisted have "come first" and should therefore receive FiT capacity first, despite any revisions to the rules governing the FiT program. For this reason, SEIA's

---

<sup>8</sup> See Clean Coalition Opening Comments at 23; SEIA Opening Comments at 6; Silverado Power Opening Comments at 4-8.

<sup>9</sup> See Clean Coalition Opening Comments at 23; Silverado Power Opening Comments at 4-8.

<sup>10</sup> See Silverado Power's Opening Comments at 4-8 for more detail on our position.

<sup>11</sup> § 399.20(f).

<sup>12</sup> See Proposed Decision at 54.

recommendation that the existing FiT program queues be eliminated is contrary to law.<sup>13</sup> Instead, in order to comply with the first-come-first-served statutory provision, presently queued generators must receive priority and must be exempted from certain of the new FiT rules, as laid out in Silverado Power’s opening comments.<sup>14</sup>

### **III. The Commission Should Eliminate the Prohibitions on Utilization of the Transmission System, and New Transmission Infrastructure and Network Upgrades, While Maintaining the Distribution System Interconnection Requirement to Ensure that Systems Are “Strategically Located.”**

We note that at least eight parties, including Silverado Power, emphasized the problems with interpreting the “strategically located” requirement to prohibit “utilization of the transmission system and new transmission infrastructure or transmission system network upgrades.”<sup>15</sup> While several of these parties provided alternative requirements, Silverado Power continues to urge the Commission simply to remove this prohibition entirely, while retaining the distribution system interconnection requirement, as we articulated in our opening comments.<sup>16</sup> We believe that, while some of these new restrictions proposed by parties may have merit, they have not been adequately vetted in this proceeding to be included as a threshold condition for participation in the FiT. In particular, while Silverado Power agrees with SEIA’s proposal to eliminate the transmission system-related restrictions as threshold requirements, we are concerned with SEIA’s recommendation that the Commission require that, “if it is ultimately determined that the project will trigger a transmission upgrade, then the developer should be

---

<sup>13</sup> See SEIA Opening Comments at 6. In fact, SEIA relies on this same first-come, first-served provision to support another of its proposals related to capacity allocation later in its comments. *Id.* at 11-13.

<sup>14</sup> See Silverado Power Opening Comments at 4-8.

<sup>15</sup> See SEIA Opening Comments at 16-17; IREC Opening Comments at 7-11; Sierra Club Opening Comments at 16-17; Clean Coalition Opening Comments at 19-20; LA County Sanitation Districts Opening Comments at 7-8; Placer County Air Pollution Control District Opening Comments at 19-20; Sustainable Conservation Opening Comments at 19-20; Silverado Power Opening Comments at 8-9.

<sup>16</sup> See Silverado Power Opening Comments at 8-9.

afforded the option of whether or not to pay for such upgrade.”<sup>17</sup> Such a structure would allow IOUs to double-count costs for network upgrades if a developer chose to make such a payment because IOUs may also eventually recover the costs of network upgrades from ratepayers.<sup>18</sup>

In the end, as we explain in our opening comments, Silverado Power believes that the distribution system interconnection requirement alone is a reasonable and sufficient way to ensure that a project is “strategically located . . . in a manner that optimizes the deliverability of the electricity generated at the facility to load centers,” as required by the statute.<sup>19</sup>

#### **IV. The Commission Should Extend the Online Date Requirement for FiT Systems to 24 Months with a 6-Month Extension for Regulatory Delays.**

In its opening comments, San Diego Gas & Electric Company (SDG&E) agreed with Silverado Power that the online date requirement for FiT projects should be extended to 24 months, while maintaining a 6-month extension for regulatory delays, based on changes proposed to the Renewable Auction Mechanism (RAM) in Draft Resolution E-4489.<sup>20</sup> The County Sanitation Districts of Los Angeles County proposed different extensions to the online date requirement in opening comments, and Pacific Gas & Electric Company (PG&E) also acknowledged the potential need for an extension.<sup>21</sup> Silverado Power continues to recommend that the Commission adopt the 24-month online date requirement suggested by SDG&E and Silverado Power for the FiT to remain consistent with RAM, as originally intended, and to give

---

<sup>17</sup> See SEIA Opening Comments at 16-17.

<sup>18</sup> See FERC Order No. 2003-A, *Standardization of Generator Interconnection Agreements and Procedures*, Docket No. RM02-1-001, at ¶ 613 (March 5, 2004) (“However, the upfront payment is not a rate for service, and thus is not intended to be the means by which the Transmission Provider recovers the cost of the Network Upgrades. Rather, the Transmission Provider’s right to charge for transmission service at the higher of an embedded cost rate, or an incremental rate designed to recover the cost of the Network Upgrades . . .”).

<sup>19</sup> See Silverado Power Opening Comments at 8-9 (referring to § 399.20(b)(3)).

<sup>20</sup> See SDG&E Opening Comments at 12-13; Silverado Power Opening Comments at 9-10.

<sup>21</sup> See LA County Sanitation Districts Opening Comments at 4-5; PG&E Opening Comments at 9-10.

developers the flexibility they require to deal with regulatory, interconnection and permitting delays outside of their control.<sup>22</sup>

**V. The Commission Should Reject CALSEIA’s Suggestion to Include a Seller Concentration Cap for the Reasons Given in the Proposed Decision.**

In its comments, the California Solar Energy Industries Association (CALSEIA) suggests that “it is necessary for the feed-in tariff to include a [seller] concentration cap to ensure the broadest possible participation in the program,” and recommends a 10-percent cap.<sup>23</sup> Silverado Power urges the Commission to reject CALSEIA’s suggestion. As the Proposed Decision explains, a seller concentration cap is not necessary, “since other program requirements, such as ‘strategically located’ and the three product types, . . . are designed to encourage a diversity of sellers and technologies in the program.”<sup>24</sup> Silverado Power also agrees with the Proposed Decision that the FiT decision should be consistent in this respect with the RAM final decision, which does not include a seller concentration limit “because such a criterion could limit competition.”<sup>25</sup>

**VI. The Commission Should Reject the IOUs’ Suggestions Related to § 399.20(l) and the FiT Contract Termination Provisions, and Maintain the Proposed Decision’s Narrow Interpretation of § 399.20(l).**

The three IOUs submitted comments suggesting that the Commission revise the Proposed Decision, specifically Section 20 discussing § 399.20(l) and contract termination provisions, to allow the inclusion of a broader list of termination provisions in the ultimate FiT PPA than are

---

<sup>22</sup> See Draft Resolution E-4489 at 8-10 (issued March 20, 2012); SDG&E Opening Comments at 12-13; Silverado Power Opening Comments at 9-10.

<sup>23</sup> CALSEIA Opening Comments at 5.

<sup>24</sup> Proposed Decision at 65.

<sup>25</sup> *Id.* (referring to CPUC, D.10-12-048, *Decision Adopting the Renewable Auction Mechanism*, R.08-08-009, Conclusions of Law ¶ 41 (Dec. 17, 2010)).

expressly articulated in the Proposed Decision.<sup>26</sup> Silverado Power encourages the Commission to maintain Section 20 as written, and in particular to maintain its intent to “interpret the termination provisions narrowly by limiting the application of termination rights to the two events described in subsections (1)(1) and (1)(2),”<sup>27</sup> namely: “(1) The owner or operator of an electric generation facility no longer meets the eligibility requirements for receiving service pursuant to the tariff or contract; [and] (2) The period of service established by the commission pursuant to subdivision (d) is completed.”<sup>28</sup> As the Proposed Decision notes, Silverado Power submitted comments to this effect earlier in this proceeding, and we refer the Commission to those comments for further detail on our position.<sup>29</sup>

**VII. The Commission Should Adopt SCE’s Suggestion to Allow Interconnection under Both the Rule 21 and WDAT Interconnection Procedures Even After a Final Decision regarding Rule 21 Tariff Reform Is Issued.**

Southern California Edison Company (SCE) suggests in its opening comments “that the Commission allow interconnection under both Rule 21 and the WDAT even after there is a final decision in Rulemaking 11-09-011, the proceeding implementing Rule 21 tariff reform.”<sup>30</sup> Silverado Power fully supports SCE’s suggestion for the same reasons that SCE gives in its comments: this approach is flexible and it opens up the FiT program to more generators, facilitating competitive pricing and a robust market for small renewable generation.<sup>31</sup> We urge the Commission to adopt this approach to FiT project interconnection.

---

<sup>26</sup> See PG&E Opening Comments at 10-11; SCE Opening Comments at 16-18; SDG&E Opening Comments at 13-14.

<sup>27</sup> Proposed Decision at 90-91.

<sup>28</sup> § 399.20(1).

<sup>29</sup> See *Silverado Power’s Brief on Implementation of Senate Bill 32*, R.-08-08-009, at 6-7 (March 7, 2011).

<sup>30</sup> SCE Opening Comments at 20.

<sup>31</sup> See *id.*

**VIII. The Commission Should Make the New FiT Program Rules Effective Only upon Final Commission Approval of the FiT PPA, Which Should Be Subject to Tier 2 or 3 Review.**

Several parties' opening comments made clear that many of the issues addressed in a FiT final decision would need to be reduced to contract terms in the FiT PPA to be implemented effectively. Silverado Power's comments alone touch on several, but not nearly all, of these issues—the proposed daisy-chaining provision, the proposed “strategically located” provision and the potential termination provisions. The contract terms that will be addressed in the final decision are critical to effective implementation of the revised FiT program, *and potential delays due to contract term discussions should not inhibit presently queued generators from moving forward under the existing § 399.20 FiT programs*. Therefore, Silverado Power recommends that Commission make the new FiT program rules effective only upon final Commission approval of the FiT PPA, which the IOUs and stakeholders are in the process of developing. Moreover, because the FiT PPA will contain such critical terms, we urge the Commission to specify that it be subject to Tier 2 or 3 review.

**IX. Conclusion**

In sum, Silverado Power requests that, in its final decision, the Commission:

1. Require projects to have independent interconnection requests rather than restricting their physical location in order to address concerns about “daisy-chaining.”
2. Clarify treatment of generators currently on waitlists for § 399.20 programs, such as the SCE CREST program. In particular, we recommend that the Commission: (a) give presently queued generators, as defined in Silverado Power's opening comments, priority for unsubscribed FiT capacity; and (b) exempt presently queued generators from certain rules contemplated by the proposed decision, specifically the prohibition against daisy-chaining and the requirements related to being “strategically located,”

- including the prohibition against projects requiring transmission system network upgrades. Silverado Power believes that such priority treatment for presently queued generators is legally required by the first-come-first-served provision in the statute.<sup>32</sup>
3. Eliminate the prohibition on transmission network upgrades while maintaining the distribution system interconnection requirement to ensure that systems are “strategically located.”
  4. Extend the online date requirement for FiT systems to 24 months with a 6-month extension for regulatory delays.
  5. Reject CALSEIA’s suggestion to include a seller concentration cap and instead maintain the viability criteria included in the Proposed Decision.
  6. Reject the IOUs’ suggestions related to § 399.20(l) and the FiT contract termination provisions, and maintain a narrow interpretation of § 399.20(l), as articulated in Section 20 of the Proposed Decision.
  7. Adopt SCE’s suggestion to allow FiT project interconnection under both the Rule 21 and the WDAT interconnection procedures, even after a final decision related to Rule 21 tariff reform is issued in R.11-09-011.
  8. Make the new FiT program rules effective only upon final Commission approval of the FiT PPA, so that existing FiT programs are not disrupted, and further specify that the FiT PPA be subject to Tier 2 or 3 review.

---

<sup>32</sup> See § 399.20(f).

Respectfully submitted this 16th day of April, 2012,

*/s/ Erica M. Schroeder*

---

Erica M. Schroeder  
KEYES, FOX & WIEDMAN LLP  
436 14th Street, Suite 1305  
Oakland, CA 94612  
Telephone: (510) 314-8200  
E-mail: [eschroeder@keyesandfox.com](mailto:eschroeder@keyesandfox.com)

Attorney for  
SILVERADO POWER LLC

**VERIFICATION**

I am the attorney for Silverado Power LLC in this matter. Silverado Power LLC is absent from the County of Alameda, where my office is located, and under Rule 1.11(d) of the Commission’s Rules of Practice and Procedure, I am submitting this verification on behalf of Silverado Power LLC for that reason. I have read the attached “**REPLY COMMENTS OF SILVERADO POWER LLC 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 OF DECISION 07-07-027 BY SUSTAINABLE CONSERVATION AND SOLUTIONS FOR UTILITIES, INC.**” 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 this 16th day of April, 2012, at Oakland, California.

*/s/ Erica M. Schroeder* \_\_\_\_\_

Erica M. Schroeder  
KEYES, FOX & WIEDMAN LLP  
436 14th Street, Suite 1305  
Oakland, CA 94612  
Telephone: (510) 314-8200  
E-mail: eschroeder@keyesandfox.com

Attorney for  
SILVERADO POWER LLC

## APPENDIX: PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **Proposed Findings of Fact**

42. Fairness to developers with projects currently on waitlists for existing § 399.20 programs, such as SCE's CREST program, requires the Commission to address the treatment of such projects under the new FiT rules implemented by this Decision.

42 43. SB 32 added subsection (k) to § 399.20 to require owners of eligible generation facilities to refund any incentives received from the CSI or the SGIP before participating in the FiT Program and to comply.

44. Many of the issues addressed in this final decision will need to be reduced to contract terms in the FiT PPA to be implemented effectively and these issues are critical to the effective implementation of the FiT program.

[following subsections re-numbered accordingly]

### **Proposed Conclusions of Law**

33. To prevent daisy-chaining, the utilities should add a provision to the § 399.20 FiT Program standard form contract that requires the seller to attest that the project represents an independent interconnection request ~~the only project being developed by the seller on any single or contiguous piece of property~~. This provision should also give utilities the authority to deny a tariff request pursuant to § 399.20(n) if the project appears to be part of a larger overall installation by the same company or consortium in the same general location. . . .

35. The statutory language, “strategically located,” is interpreted to optimize the deliverability of electricity generated at the FiT project to load centers, which means that a generator must be interconnected to the distribution system, as opposed to the transmission system, ~~and, in addition, must be sited near load, meaning not in an area with such low load that interconnection of the proposed generation would require utilization of the transmission system and new transmission infrastructure.~~ . . .

48. This decision implements SB 32 pertaining to expedited interconnection by ~~directing parties to rely on the existing provisions of Tariff Rule 21 (rather than those under review) until the Commission finalizes its on-going efforts to refine Tariff Rule 21 and expedited interconnection in R.11-09-011. Until the Commission makes a final determination in R.11-09-011, utilities should~~ allowing generators to choose which interconnection processes to use, either the process set forth in the Tariff Rule 21 (once the Commission finalizes its ongoing efforts to refine Tariff Rule 21 and expedited interconnection in R.11-09-11) or the FERC interconnection procedures, the Wholesale Distribution Access Tariff.

49. The IOUs must give presently queued generators, defined as generators that have been awaiting interconnection studies as of December 31, 2011, priority for unsubscribed FiT

capacity, and these generators should have one month from the later of the issuance of their Rule 21 interconnection study or the Commission final decision to meet the final FiT viability requirements and such receive priority for FiT capacity.

50. Presently queued generators are exempt from certain rules contained in this Decision, specifically: (1) the prohibition against daisy-chaining; and (2) the requirements related to being “strategically located,” including the prohibition against projects requiring transmission system network upgrades.

49 51. To implement § 399.2(k) requiring refund of CSI and SGIP incentives, a generator that previously received incentives under CSI or SGIP can participate in the § 399.20 FiT Program and will owe no refund if it has been online for at least ten years from the date it first received the incentive. Net-energy metering customers can participate in the § 399.20 FiT Program but should first terminate participation in net-energy metering.

50 52. A participating generator should register with FERC as a QF. Generators may utilize FERC’s self-certification process by filling out FERC’s Form 556. 51. The Commission gave full consideration to all pricing options presented in the proceeding, including that of an “administratively determined, avoided-cost based pricing mechanism.”

53. The FiT program rules contained in this decision are effective only upon final Commission approval of the FiT PPA.

54. The IOUs shall jointly submit the FiT PPA via Tier 3 Advice Letter.

[following paragraphs renumbered accordingly]