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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)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) REPLY COMMENTS ON PROPOSED DECISION REVISING FEED-IN TARIFF PROGRAM AND IMPLEMENTING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.20

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Pacific Gas and Electric Company ("PG&E") respectfully submits these reply comments regarding 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.* ("PD") issued by Administrative Law Judge DeAngelis.

I. SET-ASIDES AND TECHNOLOGY SPECIFIC PRICING PROPOSALS SHOULD BE REJECTED.

Some parties advocate the that the PD be modified to include Feed-In Tariff ("FIT") Program set-asides or technology specific pricing to benefit the various industry sectors that they represent. For example, the California Solar Energy Industries Association ("CALSEIA") advocates a set aside for projects that are 1 megawatt ("MW") and under[1], even though Public utilities Code Section 399.20 ("Section 399.20") does not draw any distinction between projects over and under 1 MW and, in fact, expressly makes the FIT Program available to all renewable resources under 3 MW that satisfy certain criteria.[2] CALSEIA fails to offer any basis for this set

[1] CALSEIA Comments at p. 4.

[2] Section 399.20(b).

aside other than its unsupported assertion that projects under 1 MW cannot “compete” with projects that are between 1-3 MW. CALSEIA ignores the fact that the FIT Program queue is first come, first served, so that smaller and larger projects are not “competing” against each other.

Biogas developers assert that the Commission should establish a set-aside for their specific technology or establish a separate biogas price.[3] However, as the PD correctly notes, Section 399.20 does not create set-asides for specific technologies, but instead creates a “first come, first served” approach for the FIT Program.[4] Had the Legislature wanted to create set-asides for specific technologies, and provide pricing solely for those technologies, it could have done so when it enacted Section 399.20. Instead, the Legislature enacted a program for all Renewable Portfolio Standard (“RPS”)-eligible generators under 3 MW that meet certain criteria. Nothing in the statute implies that the Legislature contemplated set-asides and separate pricing for specific technologies. These proposals also conflict with the customer indifference requirements in Section 399.20(d)(4).[5] Under the technology-specific pricing proposals, customers will pay higher costs for some RPS-eligible technologies. Technology-specific pricing will result in customers receiving essentially the same benefit (*i.e.*, RPS-eligible energy), but paying a higher price for certain technologies.

Finally, given the concerns about set-asides, PG&E recommends that the PD be modified to create a single FIT Program bucket rather than three distinct product buckets. Creating separate product buckets necessarily creates set-asides for certain kinds of technologies, which

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[3] Sustainable Conservation Comments at p. 8; Agricultural Energy Consumers Association (“AECA”) Comments at p. 2.

[4] PD at pp. 74-75.

[5] Cal. Pub. Util. Code § 399.20(d)(4).

may result in customers paying more for certain technologies that provide no additional customer value. Instead, the Commission should establish a single product bucket that will ensure that customers receive RPS-eligible energy and capacity at the best price, consistent with Section 399.20(d)(4) regarding customer indifference.

II. PROPOSALS TO INCREASE THE FIT PROGRAM CAPACITY ABOVE THE 750 MW STATUTORY CAP SHOULD BE REJECTED.

Section 399.20(f) expressly caps the FIT Program statewide at 750 MW to be allocated among the investor-owned utilities ("IOUs") and publically-owned utilities ("POUs") based on the respective ratios of peak demand compared to the total statewide peak demand. The PD appropriately implements this statutory provision by determining the coincident peak-hour demand of each of the IOUs and dividing that by the statewide demand.[6] In PG&E's case, the PD allocates 218.8 MW in FIT Program capacity to PG&E. Under the existing FIT Program, PG&E has executed 106.47 MW of Power Purchase Agreements ("PPAs"). Therefore, the remaining FIT Program capacity for PG&E would be 112.33 MW – effectively doubling the size of PG&E's current FIT Program portfolio. Assuming all FIT Program contracts are the maximum 3 MW, this would result in approximately 37 new FIT Program PPAs, and likely more given that many FIT projects are less than 3 MW. Furthermore, in its opening comments, PG&E has proposed mechanisms through which the capacity of existing FIT Program PPAs that are terminated would be made available to new projects.

Despite the fact that the PD will essentially double PG&E's existing FIT Program portfolio, a number of parties argue that the Commission should ignore the FIT Program cap adopted by the Legislature and instead substantially increase the size of the FIT Program. These parties advance a number of proposals to accomplish this goal, all of which should be rejected.

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[6] PD at pp. 72-73.

First, some parties advocate that the Commission should simply order the IOUs to procure hundreds of MW in excess of their proportionate shares of the 750 MW statutory cap.[7] This proposal is contrary to the clear statutory language which establishes a statewide "cap" of 750 MW.[8] The term "cap" can only be interpreted to mean a maximum amount. Moreover, this proposal is premature. Senate Bill ("SB") 32 is just now being implemented and until the IOUs and municipal utilities get close to the cap, there is no need to discuss expanding the statutory cap beyond 750 MWs statewide.

Second, some parties argue that contracts that were signed under the existing FIT Program should not apply against the 750 MW cap.[9] Section 399.20 was initially enacted by Assembly Bill ("AB") 1969 and was subsequently expanded in SB 32 to the current 750 MW cap. There is nothing in the statute or legislative history that indicates that the Legislature intended to "restart" the clock and not to count AB 1969 projects toward the 750 MW cap established in Section 399.20. Instead, recent amendments to Section 399.20 should just be considered a continuation and expansion of the program. Thus, contracts that were executed under AB 1969 should continue to count toward the 750 MW cap and, likewise, to the extent that the PPAs executed under AB 1969 are terminated, PG&E has proposed mechanisms to make the terminated capacity available to new FIT project.

Finally, CALSEIA proposes that the 750 MW cap be allocated solely among the IOUs, rather than the IOUs and POUs. SEIA takes a slightly different approach arguing that only the

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[7] Sierra Club Comments at pp. 14-15; Clean Coalition Comments at pp. 8-9; Solar Energy Industries Association ("SEIA") Comments at p. 5.

[8] Cal. Pub. Util. Code § 399.20(f).

[9] Center for Energy Efficiency and Renewable Technologies ("CEERT") Comments at p. 14; SEIA Comments at pp. 5-6.

incremental 250 MW added by SB 32 should be allocated among the IOUs and POUs.[10] As with the other proposals described above, these proposals are directly contrary to the statutory language which requires the entire 750 MW cap be allocated on a proportionate basis among the IOUs and POUs.

III. THE PRICING MECHANISM PROPOSED IN THE PD IS CONSISTENT WITH SECTION 399.20.

CEERT argues that Section 399.20 requires an administratively determined price for the FIT Program and thus claims the pricing methodology adopted in the PD is unlawful.[11] A simple review of the statutory language highlights the fundamental flaw in CEERT's argument. Section 399.20(d) provides that the Commission shall adopt a "market price" methodology for the FIT Program. That is exactly what the PD does, adopting a methodology for determining market prices by starting with a base price and adjusting that base price in response to market conditions (*i.e.*, subscription levels for each period). Section 399.20(d) does not require an administratively determined price nor does it require a specific methodology for determining market prices. CEERT's reliance on the Renewable Auction Mechanism ("RAM") decision (*i.e.*, D.10-12-048) is equally misplaced. In that decision, the Commission merely explained for background purposes in a single paragraph the differences between the RAM Program and a FIT Program.[12] The Commission did not state that RAM Program prices could not be used as the starting point for FIT Program pricing nor did the Commission state that the RAM and FIT Programs needed to be entirely distinct and different. CEERT takes this single paragraph in D.10-12-048 out of context.

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[10] CALSEIA Comments at p. 3; SEIA Comments at pp. 3-4.

[11] CEERT Comments at pp. 6-11.

[12] D.10-12-048 at p. 2.

IV. PROPOSALS TO INCLUDE ADDERS TO THE FIT PROGRAM PRICES ARE UNLAWFUL AND CONTRARY TO STATUTE.

Some parties assert that the FIT Program price should include environmental compliance costs.[13] However, none of these parties demonstrate that these costs are uniform for all FIT projects nor do they quantify the amount of an environmental adder that would be applicable for all FIT projects. This is one of the concerns identified in the PD.[14] More fundamentally, since a FIT project developer in the queue has the option to choose whether to accept a specific price when each subscription window opens, presumably the developer will consider its own environmental compliance costs when determining whether a specific price is sufficient to execute a FIT Program PPA. Thus, environmental compliance costs are effectively included in the contract price if the FIT project developer elects to execute a PPA because the developer will have factored these costs into its determination as to whether a specific price is sufficient.

A number of parties also continue to advocate for a locational adder for FIT projects located in certain areas.[15] These parties advocate either using the locational adder proposed by E3 or a 10% locational adder similar to the adder adopted for the small Combined Heat and Power ("CHP") program adopted under AB 1613. However, these parties offer no evidence that all of the FIT projects will offer locational benefits. In addition, there are several reasons why a locational adder is not appropriate. First, as PG&E explained in earlier comments filed in this proceeding, FIT projects may actually result in additional distribution and transmission costs and may provide no specific locational benefits.[16] Second, the locational benefits of distributed

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[13] Sustainable Conservation Comments at p. 7; County Sanitation Districts of Los Angeles Comments at pp. 8-9; AECA Comments at pp. 3-4; CEERT Comments at p. 13.

[14] PD at p. 34.

[15] CALSEIA Comments at pp. 4-5; Clean Coalition at pp. 14-15; SEIA Comments at pp. 7-9.

[16] *Pacific Gas and Electric Company's Comments on Section 399.20 Ruling Dated June 27, 2011*, filed July 21, 2011 at pp. 10-11, 17.

generation ("DG") have been the subject of substantial dispute in prior Commission proceedings, and there is no basis for concluding that FIT Projects offer any unique locational benefits as compared to DG generally. Third, as the Federal Energy Regulatory Commission ("FERC") explained in *CPUC II*, a locational adder must be based on "an actual determination of the expected costs of upgrades to the distribution and transmission system that the QFs will permit the purchasing utility to avoid . . .."[17] Here, there has been no determination of actual locational benefits associated with specific FIT projects. Fourth, in its November 2, 2011 comments in this proceeding, PG&E provided a detailed discussion of the fundamental methodology flaws in the E3 approach and demonstrated that the E3 methodology cannot be relied on to set a locational adder.[18] Fifth, the 10% locational adder adopted for the AB 1613 CHP program only applied to projects located in local Resource Adequacy ("RA") areas, determining that the local RA provided by these projects justified the adder.[19] FIT projects are not required to be located in local RA areas and thus there is no basis for asserting they should be entitled to a 10% locational adder. Finally, there is nothing in the record to support a 10% locational adder for all FIT projects. The Commission should not adopt a pricing proposal and include a locational adder when there is no record to demonstrate any actual benefits.

In addition to advocating a locational adder, SEIA also advocates that the Commission adopt the transmission adder for FIT projects originally proposed by Staff last year.[20] Staff proposed that certain transmission values for winning bids in the RAM Program be used for FIT projects as a transmission adder. However, the Staff Proposal provided no basis as to why a FIT

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[17] *California Public Utilities Commission*, 133 FERC ¶ 61,059 (2010) at P. 31.

[18] *Pacific Gas and Electric Company's Comments on Staff's Proposal Regarding the Implementation of Section 399.20*, filed November 2, 2011 at pp. 10-22.

[19] Decision ("D.") 11-04-033 at pp. 27-28.

[20] SEIA Comments at pp. 9-10.

project developer should receive an adder associated with the transmission costs incurred for an entirely different project developed through an entirely different program. RAM projects can be substantially bigger (*i.e.*, up to 20 MW) than FIT projects (limited to 3 MW at the most) and, given the potentially large size of RAM projects, these projects may incur substantial transmission costs unique to each RAM project. In addition, as the Staff Proposal acknowledged, the estimated transmission costs included in a Phase I or System Impact Study associated with a RAM project "usually overestimate transmission costs."[21] There is no easy corrective adjustment for this over-estimation problem, short of waiting until the RAM project is complete before determining the transmission adder. Finally, FIT projects may not result in any actual avoided transmission and/or distribution costs. To the extent the transmission adder is premised on the concept that FIT projects will allow a utility to avoid transmission and distribution costs, the reality is that customers may not receive any such benefit. Customers should not be paying a transmission adder for up to 20 years when there is no guarantee that a single dollar in transmission and/or distribution costs will be avoided.

V. CERTAIN PROPOSALS TO MODIFY THE PRICE ADJUSTMENT MECHANISM AND STARTING PRICE SHOULD BE REJECTED.

Clean Coalition proposes that price decreases only occur when at least 6 projects or 18 MW of capacity have been subscribed (rather than subscription of all of the capacity within a specific subscription window) and that price increases occur when 9 MW or less of capacity have been subscribed.[22] It is unclear why price increases and decreases should not be symmetric. Moreover, Clean Coalition's proposal makes it significantly harder to decrease prices, as compared to price increases, which will only serve to increase customer costs while hindering

[21] Staff Proposal at p. 9, n. 12.

[22] Clean Coalition Comments at p. 10.

cost decreases. This proposal does not allow customers to capture the benefits of decreases in market prices and should be rejected.

Sierra Club proposes that price decreases occur only if there are two consecutive periods of full subscription, but fails to provide any reasoned basis for this proposal.[23] If a certain period is fully subscribed, this indicates that the available price is likely more than sufficient to allow FIT project developers to proceed with their projects. There is no reason to wait for a second period to be fully subscribed to lower the price. Indeed, delaying a price decrease, as Sierra Club suggests, would only mean that customers are required to pay higher than necessary prices for PPAs executed during the second period as compared to lower priced PPAs that could have been executed during the second period if the price had been decreased.

Clean Coalition also proposes a 15% increase in the starting price to normalize the RAM prices to the smaller FIT Program projects.[24] Notably, Clean Coalition admits that the data that it relies on to justify the 15% increase is "well out of date" and it offers no further evidence to support its proposed increase. Sierra Club also asserts the starting price is too low but fails to propose any alternative.[25] Moreover, even if the starting price is too low, it will quickly increase in subsequent months based on the price increase mechanism adopted in the PD. Thus, there is no need to artificially inflate the starting price as Clean Coalition and Sierra Club propose as it will automatically adjust to reflect the market if the price is too low.

VI. ADDITIONAL PROPOSALS MADE BY PARTIES.

In addition to the issues discussed above, parties made a number of other proposals that need to be briefly addressed. FuelCell Energy argues that FIT projects do not need to be

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[23] Sierra Club Comments at p. 13.

[24] *Id*. at p. 13.

[25] Sierra Club Comments at p. 10.

Qualifying Facilities ("QFs").[26] However, the entire premise of the pricing proposal adopted in the PD is that the prices reflect avoided costs, which the Commission has authority under the Public Utility Regulatory Policies Act ("PURPA") to set for QFs.[27] But for the Commission's authority to set prices for QFs under PURPA, the Commission would not have the jurisdiction to establish FIT Program prices. In order to satisfy the PURPA requirements, the Sellers must be QFs and thus FuelCell Energy's argument to the contrary is meritless.

SEIA argues that the Time-of-Delivery ("TOD") factors currently contained in the 2011 Market Price Referent ("MPR") resolution should be used for energy-only FIT projects and that projects that provide full-deliverability should receive enhanced TOD factors.[28] The MPR TOD factors assume that the facility provides RA value and thus these TOD factors essentially reflect a project that is fully deliverable. FIT projects that are energy-only should get lower TOD factors to reflect the fact that they are not providing RA. Thus, SEIA's argument should be rejected.

Respectfully submitted,

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By: */s/ Charles R. Middlekauff*
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Dated: April 16, 2012

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[26] FuelCell Energy Comments at p. 10.

[27] PD at pp. 11-13.

[28] SEIA Comments at p. 14.

VERIFICATION

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing *PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) REPLY COMMENTS ON PROPOSED DECISION REVISING FEED-IN TARIFF PROGRAM AND IMPLEMENTING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.20*. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 16th day of April, 2012 at San Francisco, California.

/s/ Sandra Burns

SANDRA BURNS
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