



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE **FILED**

STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue)
Implementation and Administration of) Rulemaking 11-05-005
California Renewables Portfolio Standard) (Filed May 5, 2011)
Program.)

REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)
ON PROPOSED DECISION REVISING FEED-IN TARIFF PROGRAM

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Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC), Southern California Edison Company (SCE) respectfully submits these reply comments on the Proposed Decision Revising Feed-In Tariff (FiT) Program (PD).¹

I.

INTRODUCTION

The opening comments on the PD reflect that a diverse range of stakeholders support the basic elements of the PD's new competitive, market-based pricing mechanism for the Public Utilities Code Section 399.20 (Section 399.20) FiT program. The PD's Renewable Market Adjusting Tariff (Re-MAT) pricing methodology is consistent with statutory requirements and is an appropriate expansion of the CPUC's adoption of market-based pricing for the Renewable Auction Mechanism (RAM) program. The CPUC should reject alternative proposals for administratively-determined FiT pricing. In addition to resulting in stale prices that are inevitably too high or too low, such prices are contrary to state and federal law.

The CPUC should implement the Re-MAT pricing mechanism with the reasonable protections proposed by SCE and other parties against market distortions and non-competitive

¹ Administrative Law Judge DeAngelis increased the page limit for reply comments to 10 pages by an e-mail ruling dated April 4, 2012.

pricing. These modifications will allow the CPUC to create a FiT program consistent with statutory guidelines that stimulates the market, while also protecting customers from overpayments in accordance with the PD’s guiding principles and the ratepayer indifference requirement.

II.

THE CPUC SHOULD ADOPT THE RE-MAT WITH CUSTOMER PROTECTIONS

A. The PD Appropriately Adopts Market-Based Pricing That Is Consistent With Statutory Requirements And CPUC Precedent

SCE fully supports the PD’s move to market-based pricing for the Section 399.20 FiT program and strongly endorses the basic elements of the Re-MAT pricing methodology. The other investor-owned utilities (IOUs), DRA, TURN, and other stakeholders also generally support the Re-MAT approach.² Specifically, PG&E “supports the PD because it is well-reasoned, consistent with the statutory language in Public Utilities Code Section 399.20, and appropriately balances the concerns raised by a number of different interest groups.”³ Similarly, DRA commends the PD “for the election of a market based pricing methodology as opposed to an administratively determined price.”⁴ The PD correctly recognizes that a “market-based approach is in the best interest of California electricity customers.”⁵ Accordingly, the CPUC should adopt the core features of Re-MAT pricing – release of the program capacity in increments over time and adjustments to the starting FiT price based on program subscription.

CEERT and some other parties argue that various aspects of the Re-MAT do not comply with Section 399.20 and/or are inconsistent with the CPUC’s RAM decision.⁶ They are wrong. In particular, CEERT incorrectly claims the Re-MAT is contrary to the Legislature’s guidance in

² See PG&E at 1; SDG&E at 3; DRA at 1-3; TURN at 1-3; IREC at 1-2; Sanitation Districts at 1-2; Placer at 1.

³ PG&E at 1.

⁴ DRA at 1-2.

⁵ PD at 53.

⁶ See CEERT at 4-15. See also AgPower at 3-5; Clean Coalition at 6-7, 10-11; FCE at 5-7; AECA at 2-4; Sustainable Conservation at 7-8.

enacting Senate Bill (SB) 32.⁷ SB 2 (1x) changed the pricing language in SB 32.⁸ Thus, CEERT’s reliance on SB 32 ignores this subsequent change in law. Moreover, there is nothing about the Re-MAT that conflicts with the Legislature’s guidance in SB 32.⁹ CEERT reasons that the Legislature’s declarations, combined with Section 399.20, “make clear that the intent and direction of the statute as a whole was to result in a simplified, transparent, ‘standard tariff for electricity’ that will encourage ‘small projects’ that ‘face difficulties’ in participating in RPS solicitations.”¹⁰ By CEERT’s own standards, the Re-MAT meets these requirements. The Re-MAT is a simplified, transparent, standard tariff for electricity limited to small renewable projects 3 MW and under.¹¹ Moreover, it is not a solicitation. Although the pricing adjusts by set price increments based on program subscription, eligible generators are not competing against larger renewable resources.

CEERT also asserts that administratively-determined pricing is required for the FiT program.¹² CEERT does not point to anything in Section 399.20 that mandates, or even suggests, that FiT pricing must be set at an administratively-determined price. Indeed, the statute provides that the “payment shall be the *market price* determined by the Commission” and that the CPUC “shall establish a methodology to determine the *market price* of electricity.”¹³ The fact that the FiT is a “standard tariff for electricity” does not preclude price adjustments based on market response. Maintaining a connection between the FiT price and the market is much more consistent with establishing a *market price* than making a guess at what the market will bear.¹⁴

⁷ CEERT at 7-8.

⁸ See PD at 15-17.

⁹ See SB 32 § 1.

¹⁰ CEERT at 8.

¹¹ Additionally, parties to this proceeding are in the process of creating a standard, simplified contract to be used by all three IOUs.

¹² CEERT at 3, 8.

¹³ Cal. Pub. Util. Code §§ 399.20(d)(1)-(2) (emphasis added).

¹⁴ As detailed in the PD, the Re-MAT methodology also complies with the statutory factors in Section 399.20(d)(2). The Re-MAT considers the long-term market price of electricity for fixed price contracts by utilizing the RAM prices for such contracts as a starting price and then adjusting such starting price based on market response from eligible renewable generators 3 MW and under. To the extent that such small renewable generators require higher (or lower) prices for long-term fixed price contracts than the RAM generators, the starting price adjusts to reach an equilibrium point. Likewise, the Re-MAT accounts for the long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities by utilizing a RAM starting price that

Continued on the next page

Similarly, Clean Coalition suggests “the clear intent of the Legislature was to enact a feed-in tariff at the Market Price Referent.”¹⁵ Yet Clean Coalition offers nothing but its own supposition to support this conclusion. Had the Legislature intended to mandate market price referent (MPR) pricing for the Section 399.20 FiT program in SB 2 (1x) it could have easily done so. An earlier version of Section 399.20(d)(1) in SB 722, the predecessor to SB 2 (1x), included just such language stating that “[t]he payment shall be the market price determined by the commission pursuant to Section 399.15, as it existed on January 1, 2010. . . .”¹⁶ The Legislature did not adopt this language, instead enacting the current language in Section 399.20(d), which does not refer to the MPR.¹⁷ As such, there is no basis to conclude the Legislature intended to require MPR-based FiT pricing.¹⁸ If anything, the Legislature affirmatively moved away from the MPR.

Furthermore, the statutory elements included in Section 399.20(d)(2), which were previously included in Section 399.15, never required the CPUC to base its determination of the “market price of electricity” solely on administratively-determined factors. In establishing the MPR methodology, the CPUC recognized that “contracts would provide a simple and relatively accurate measure of market price,” but concluded that, “in practice there needs to be a usable quantity of contracts meeting the statutory requirements, and it is not clear that such contracts presently exist.”¹⁹ Thus, the CPUC relied on the second and third statutory elements (*i.e.*, the long-term ownership, operating, and fixed-price fuel costs associated with new generating facilities and the value of different

Continued from the previous page

accounts for such costs and by allowing for further adjustment of the starting price to account for eligible FiT generators’ costs. FiT generators will strike on a price that covers their costs. In addition, the Re-MAT incorporates the value of different electricity products including baseload, peaking, and as-available electricity by adjusting the FiT price based on time-of-delivery (TOD) factors that account for when the electricity is delivered. The Re-MAT also creates separate capacity allocations, queues, and pricing for each product category.

¹⁵ Clean Coalition at 11.

¹⁶ SB 722 (August 31, 2010 version) (available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100831_amended_asm_v90.html).

¹⁷ “The Legislature’s omission of a provision from the final version of a statute which was included in an earlier version ‘constitutes strong evidence that the act as adopted should not be construed to incorporate the original provision.’” *WDT-Winchester v. Nilsson*, 27 Cal. App. 4th 516, 534 (1994) (citing *Central Delta Water Agency v. State Water Resources Control Bd.*, 17 Cal. App. 4th 621, 634 (1993)).

¹⁸ Indeed, Clean Coalition also “feels that a starting price comprised of a normalized RAM clearing price, plus a locational adder for projects located in ‘hot spots,’ is compliant with SB 32.” Clean Coalition at 11.

¹⁹ D.03-06-071 at 16.

products) to establish the administratively-set proxy plant MPR methodology.²⁰ The CPUC also stated, however, that “[a]s more contracts come into existence, the Commission will increase its reliance on such contracts.”²¹ Therefore, the CPUC has always recognized that it could utilize actual market pricing in its determination of the “market price of electricity” under the statute.

CEERT and other parties also incorrectly claim that the PD fails to include “environmental compliance costs” in the Re-MAT pricing structure as mandated by Section 399.20.²² Environmental compliance costs are in fact accounted for via the price adjustment mechanism. The price adjusts according to market conditions, *i.e.*, generators strike on a price that covers their project costs, *including environmental compliance costs*, plus a reasonable rate of return.²³ This is easier to administer than a complex calculation of environmental compliance costs added to a set price, which does not necessarily reflect any avoided costs of the *utility*.²⁴ Indeed, it is clear from biogas parties’ comments that their proposed environmental compliance cost adders would violate avoided cost principles because they are specific *generators’* costs, not costs avoided by the utilities.²⁵ Technology-specific environmental compliance cost adders would also not hold customers indifferent to the tariff since customers would be paying more for the same energy that is being offered by lower cost renewable generators. Therefore, the Re-MAT approach is an appropriate method to account for environmental compliance costs while maintaining ratepayer indifference.

Finally, CEERT argues that the RAM results are an inappropriate starting point for Re-MAT because D.10-12-048 distinguishes the RAM as an auction-based mechanism aimed at larger

²⁰ *See id.* at 18-24.

²¹ *Id.* at 17.

²² *See* CEERT at 12-13; FCE at 5; AgPower at 4-5; AECA at 3-4; Sustainable Conservation at 7.

²³ This is substantiated by those in the generator community, such as AECA, which states that “[t]he pricing mechanism, as proposed, will result in projects in low cost areas or baseload projects with lower compliance costs driving the price and precluding other higher cost baseload product category technologies.” AECA at 4.

²⁴ Any adder implemented by the CPUC must be based on actual costs avoided by the purchasing utilities. *See Cal. Pub. Util. Comm’n v. SCE*, 133 FERC ¶ 61, 059 (FERC Clarification Order) at P 31 (2010).

²⁵ *See, e.g.*, AECA at 4 (noting environmental compliance costs of various technologies, including various biogas technologies, vary greatly); Sanitation Districts at 9-10 (estimating that “additional control systems would cost \$28 per MWh,” representing environmental compliance costs that are unique to SCAQMD biogas generators).

projects, not a FiT.²⁶ CEERT also contends that the PD did not provide sufficient “analysis of the RAM itself or the market targeted by Section 399.20 to see if they are truly a match.”²⁷ These arguments overstate the significance of the RAM results as a basis for the Section 399.20 FiT program. RAM pricing is merely a starting point for FiT pricing. Thus, the RAM market is not determinative of the FiT market for purposes of pricing – it only represents a starting price to shape the first month’s offering so that the Re-MAT price adjustment mechanism can then enable FiT participants to establish the market price based on their own market response.

The Re-MAT FiT is distinct from the RAM. It is a standard tariff offered on a first-come-first-served basis. The Re-MAT establishes queues that determine the order in which a generator can strike on a transparent price and releases capacity in steady monthly increments. Additionally, the FiT price adjusts in set increments based on program subscription and eligible generators are not competing against larger renewable resources. CEERT is incorrect in stating that the “Re-MAT really is still just a RAM for 3 MW and below projects.”²⁸

Moreover, the CPUC identified several benefits of market-based pricing over administratively-determined pricing in the RAM decision:

[T]here is the potential for a fixed price to be set too high or too low, and either option could create financial and regulatory uncertainty. If the price is too high, it would be unreasonable for ratepayers. If it is too low, no projects would be built.²⁹

To balance the ability for small projects to secure financing and attain a reasonable price with the assurance that customers are not overpaying, the CPUC adopted market pricing for the RAM program.³⁰ That same reasoning applies here and supports implementing market-based pricing for the FiT program, with adjustments to reflect smaller projects and Section 399.20’s requirements.

²⁶ CEERT at 8.

²⁷ *Id.* at 7.

²⁸ *Id.* at 11.

²⁹ D.10-12-048 at 16.

³⁰ *Id.*

B. Alternative Proposed Pricing Structures Are Contrary To State And Federal Law

As an alternative to the Re-MAT's market-based pricing, CEERT and AgPower argue that the CPUC should adopt an administratively-determined, technology-specific, avoided cost price.³¹ Such technology-specific pricing is contrary to federal law. As recognized by the PD, there is no state mandate that IOUs procure specific renewable technologies.³² Without an obligation in the Renewables Portfolio Standard (RPS) statute to procure a percentage of certain technologies, setting technology-specific prices would clearly violate federal law.³³ Technology-specific pricing would also violate Section 399.20's ratepayer indifference and first-come-first-served requirements because the statute is technology-neutral and does not mandate procurement of specific technologies.

Certain parties also continue to advocate for various price adders that have been consistently shown to violate state and federal law.³⁴ In particular, SCE notes that, as originally introduced, SB 32 provided: "The commission may adjust the payment rate to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis *and any other attributes of renewable generation.*"³⁵ Subsequent amendments eliminated the adjustment for "other attributes of renewable generation." Even if the statute provided for such an adjustment, it would be inconsistent with the concept of avoided cost pricing, unless the adder is proven to represent actual costs the utility would have otherwise incurred in purchasing from another resource. As recognized by the PD,³⁶ parties that continue to advocate for a locational benefits/adder or a transmission adder have not adequately demonstrated in the record that these represent costs actually avoided by the utility to

³¹ CEERT at 2-3, 11; AgPower at 2-3. *See also* Sierra Club at 10. Placer also argues for a "benefit" carve-out. *See* Placer at 7-18.

³² PD at 34-35.

³³ *See* FERC Clarification Order at P 26 (In determining the avoided cost rate, "the CPUC *may* take into account actual procurement *requirements*, and resulting costs, imposed on utilities in California.") (emphasis added). SCE does not fully agree with the PD's analysis of PURPA and avoided cost. Even if the CPUC's interpretation of the FERC Clarification Order is consistent with PURPA, however, the language is permissive and does not mandate consideration of state procurement obligations.

³⁴ *See, e.g.*, SCE's Reply Brief Regarding Implementation of Senate Bill 32 at 6-9; SCE's Reply Comments on the October 13, 2011 Renewable FiT Staff Proposal at 11-14.

³⁵ SB 32 (December 2, 2008 version) (proposed amendment to Section 399.20(d)) (emphasis added). *See* http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_32_bill_20081202_introduced.pdf.

³⁶ PD at 38.

justify higher payments. Moreover, the PD already accounts for locational/transmission value through its “strategically located” requirement. Since all eligible projects must be interconnected to the distribution system and sited near load,³⁷ there is no reason to differentiate prices.

C. The CPUC Should Implement Reasonable Protections For Customers

In support of the PD’s Re-MAT, all IOUs and ratepayer advocates generally recommend adjustments or additional protections to ensure competitive pricing, prevent gaming, and protect customers from excessive and non-competitive pricing. While there are a variety of options available to the CPUC, if SCE’s specific modifications are not adopted,³⁸ SCE would still support many of the similar protections offered by other parties.³⁹ These revisions strike an appropriate balance between the PD’s goals by providing stable pricing to generators for financing purposes, sufficiently stimulating market demand, and minimizing customer costs.

IREC, Sanitation Districts, and Placer also support the core features of the Re-MAT, but suggest eliminating, delaying, or decreasing capacity reassignment to give baseload technologies, particularly biogas, sufficient time to develop and participate in the program.⁴⁰ The PD, however, already goes too far in insulating categories that are likely to be non-competitive from market forces.⁴¹ By separating the three product categories into three separate queues that will set three different prices, biogas generators are already significantly protected from being shut out of the market due to permitting delays. SCE’s proposal to shift unsubscribed capacity to a new month at the end of the program period would further ensure that capacity is available down the line when many biogas generators may be ready to participate.

³⁷ *Id.* at 62-63.

³⁸ SCE’s proposes that the CPUC eliminate product buckets, reallocate unsubscribed capacity to a new month at the end of the program period, reduce price adjustment increments to \$2/MWh, add a price cap of \$192.50/MWh and protections against market manipulation and gaming, and clarify the applicable program rules when there are fewer than five project sponsors in the queue.

³⁹ These include, for example, reducing the price adjustment increments, reallocation methods that enhance competition, price caps, suspension/refusal rights, and extending the program from 12 months to 2 years. *See* DRA at 3-6; PG&E at 2-8; TURN at 5; SDG&E at 7-10.

⁴⁰ *See* IREC at 1-2; Sanitation Districts at 7; Placer at 2-6.

⁴¹ *See* SCE at 5; PG&E at 8-9; DRA at 5-6; TURN at 5.

As detailed in its opening comments, SCE supports eliminating the three product categories. Separate product categories with distinct queues and pricing are not required by Section 399.20. One of the factors to be considered by the CPUC is the “value of different electricity products.”⁴² Nevertheless, this is *permissive* and cannot be at the expense of *mandated* ratepayer indifference. Moreover, separate product categories are not required to consider the value of different products. The Re-MAT already accounts for the value of different products by adjusting the FiT price by TOD factors. In considering the same language in the MPR methodology, the CPUC determined that separate baseload and peaking MPRs were not required, and that application of TOD factors to the MPR sufficiently takes into account the value of different products.⁴³

In any event, any further shielding of product categories from competing against one another would not only defeat the purpose of a market-based mechanism, but it would also violate Section 399.20(d)(4)’s requirement that ratepayers be held indifferent to the tariff. If the CPUC implements the Re-MAT in a way that would effectively preclude competition between the product categories, this would establish *de facto* technological carve-outs for capacity and prices. This is inconsistent with the PD’s own conclusion that “[t]he plain language of § 399.20 neither directs nor suggests that technology-specific costs be included in a FiT Program price methodology.”⁴⁴ If the Re-MAT is structured so that customers pay excessive pricing for baseload products when compared to other renewable products, this is not permitted by the statute.⁴⁵ Additionally, reserving capacity for baseload products or technologies at the expense of others does not comport with Section 399.20’s requirement that the tariff be offered on a “first-come-first-served” basis. Nothing in the statute

⁴² Cal. Pub. Util. Code § 399.20(d)(2)(C).

⁴³ See D.05-12-042 at 30-31.

⁴⁴ PD at 34.

⁴⁵ Indeed, biogas generators’ claim that they need much higher prices to cover their project costs is not supported by the record. In SDG&E’s current Section 399.20 FiT program, 12 of the 15 MWs come from biomass and biogas projects, with the highest priced contract at \$117.30/MWh. See <http://sdge.com/documents/executed-feed-tariff-contracts-watercre>. The Re-MAT provides a mechanism for the price to adjust to above this level within only 5 months, and with SCE’s proposed \$2/MWh increments this level could be achieved in only 6 months.

mandates procurement of particular product types and non-baseload projects should not be disadvantaged in receiving FiT contracts.

III.

THE CPUC SHOULD ENSURE THAT CUSTOMERS DO NOT PAY FOR TRANSMISSION NETWORK UPGRADES ASSOCIATED WITH FIT GENERATORS

The parties offer a variety of comments on the PD's definition of "strategically located."⁴⁶ SCE supports the PD, although it does not object to IREC's proposal that a generator must pass the Fast Track or transmission interdependency screens.⁴⁷ However, if the CPUC allows generators who require transmission system network upgrades at any stage (either before or after the contract is executed) to receive a FiT contract, the CPUC should also require such generators to pay for such transmission upgrades. Such a buy-down provision is included in the proposed Joint IOU power purchase agreement (PPA),⁴⁸ and is necessary to ensure that customers do not pay for costly transmission network upgrades for projects that are required to be "strategically located."

Respectfully submitted,
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⁴⁶ See, e.g., IREC at 7-11; Sanitation Districts at 7-8; Clean Coalition at 18-19; SEIA at 17.

⁴⁷ IREC at 8-11.

⁴⁸ See Proposed Joint IOU PPA, Section 14.9.2.

VERIFICATION

I am a Manager in the Renewable and Alternative Power Department of Southern California Edison Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

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

Executed this **16th day of April, 2012**, at Rosemead, California.

/s/ William V. Walsh

By: William V. Walsh

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