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)

SUSTAINABLE CONSERVATION AND CALIFORNIA FARM BUREAU FEDERATION REPLY COMMENTS TO SECTION 399.20 RULING JUNE 27, 2011

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TABLE OF CONTENTS

I. INTRODUCTION.. 1
II. The Feed-in Tariff Should be Guided by Simple Principles... 2
III. Opportunities to Improve Upon the Proposed Tariffs 2
  A. The Proposed Tariffs Will Not Yield a Simple Program.. 2
    1. The RAM Tariff Is Not Appropriate Here 3
    2. The Excess Sales Option Must Be Part Of The Section 399.20 Tariff........................ 4
    3. Pricing Must Be Simple To Understand 6
  B. The Commission Must Fix Interconnection Problems.. 7
IV. Other Issues 8
  A. Dispute Resolution Should Occur At The CPUC 8
  B. The Prohibition On SGIP Participation Should Be Waived For Biogas........................ 9
V. Procedural Issues 9
  A. Hearings Are Not Required.. 9
  B. Reservation For Biomass Technologies 10
VI. Conclusion... 10

I. INTRODUCTION

In accordance with the Rule of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC") and the Rulings from the Administrative Law Judges, Sustainable Conservation and the California Farm Bureau Federation ("Parties") submits these Reply Comments on implementation of Section 399.20, including the Comments submitted July 21 and the proposed tariffs and draft forms of agreement submitted by the investor-owned utilities August 5.

Our review of the proposed tariffs and draft forms of agreement confirms the need in particular for the utilities to demonstrate ownership of the outcome, especially success in enrolling and interconnecting diverse renewable technologies under the Section 399.20 tariff. The utilities' responsiveness to SB 32 and the Commission's related directives varies. Southern California Edison's ("SCE") proposal effectively creates barriers rather than facilitates a simple or responsive process, as is evidenced by SCE's ongoing reliance on the Renewable Auction Mechanism format, recommendations for complex pricing schemes, immensely lengthy contracts, and ongoing insistence that interconnection at the distribution level be governed by the federal government. The proposed tariffs submitted by Pacific Gas and Electric ("PG&E) and San Diego Gas and Electric ("SDG&E") could provide a better place from which to start. Although their tariffs provide a framework, they still do not meet many of the requirements of SB 32 (and appear to introduce new concepts for the first time) and thus would not, if approved as submitted, facilitate the participation of most farm-scale projects in the next iteration of California's feed-in tariff. The Commission is better advised to modify the current feed-in tariff to accommodate the specific variables identified in SB 32.

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II. The Feed-in Tariff Should be Guided by Simple Principles

Reviewing the many Opening Comments, proposed tariffs, and forms of agreement makes it clear that the Commission should follow a set of principles that are derived from experience and reference existing law in guiding the development of a revised feed-in tariff pursuant to Senate Bill 32. We therefore reiterate for the Commission's benefit the proposed principles recommended in our opening comments:

1. The program should be easy to access, understand, and implement.
2. The Commission must ensure that diverse renewable resources are able to participate.
3. Pricing under this tariff must recognize the contributions of different renewable technologies (baseload vs. intermittent), as dictated by SB 32.
4. The Investor Owned Utilities should demonstrate ownership of the outcome and not just the process (*i.e.*, success at overcoming hurdles to bringing new facilities on line).

III. Opportunities to Improve Upon the Proposed Tariffs

In this Section, Parties identify specific concerns with the proposed utility tariffs and forms of agreement, and how they can be improved.

A. The Proposed Tariffs Will Not Yield a Simple Program

The utility tariffs vary in their responsiveness to Section 399.20 and the direction provided by the CPUC. As one example, the Commission should take note of the lengthy contract proposed by SCE – the contract alone is 80 pages, attachments extend from A – S, and the definitions are over 20 additional pages – and consider whether SCE's approach will ever allow small-scale renewable projects to come online. SCE's proposed form of contract represents, for example, a sharp contrast with the German feed-in tariff, submitted as an

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attachment to the Opening Comments of the California Solar Industries Association ("CalSEIA").

1. The RAM Tariff Is Not Appropriate Here

The utilities all propose to use the form of tariff currently being considered by the Commission for the Renewable Auction Mechanism ("RAM"), in some cases for projects greater than 1.0 MW and in other cases for all projects. As stated in the Opening Comments of Sustainable Conservation and the Green Power Institute, the CPUC never intended the RAM program to function as a feed-in tariff, stating on p. 1 of D.10-12-048: "RAM is distinct from a feed-in tariff as that term has traditionally been used." Yet the utilities propose to base their Section 399.20 tariffs on the RAM, bringing forward many program design features that make the RAM wholly inappropriate as a feed-in tariff. The point of a feed-in tariff is its known price and simplicity, and focus on enrolling customers, many of whom have the ability to generate electricity as a by-product of other activities in which they are engaged. Indeed, SB 32 recognized in Section 1(c) that "Small projects of less than three megawatts that are otherwise eligible renewable energy resources may face difficulties in participating in competitive solicitations under the renewables portfolio standard program." Applying the tariff for an auction-based program in the current circumstances is contrary to Legislative intent and Commission direction and is antithetical to encouraging small renewable distributed generation.

SCE claims the RAM tariff is a reasonable model for the Section 399.20 tariffs because it has been "vetted by stakeholders." This is not true. Many of the entities that might participate in development of the feed-in tariff have not participated in development of the RAM tariff. Indeed, Sustainable Conservation did not participate in development of the RAM tariff based on our stated opposition to the RAM for farm-scale biomass projects, and our ongoing advocacy for the CPUC to commence implementation of SB 32. Expecting the customers and potential new

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generators that are most likely to take advantage of the feed-in tariff to participate in the time-consuming process of developing a RAM-type tariff is unrealistic. In the case of customers, their primary business is not energy generation. And dedicated new generators are often small businesses with limited resources. The whole point of the feed-in tariff is to make it easy for these customers and new renewable generators to sell excess energy to the grid under a standard contract at a set price.

A better place for the utilities to start in developing their Section 399.20 tariffs would be the existing feed-in tariff. SDG&E and PG&E have taken such an approach for projects under 1.0 MW. Their recognition for the streamlining potential for projects sized at that level offers an appropriate framework for the tariffs. A middle ground, where the requirements to address projects 3 MW and under are addressed in a single tariff, is more pragmatic than the multiple tariff approach SDG&E and PG&E have taken. There is no reason the entire tariff should not be based on the current tariff, updated to meet the requirements of Senate Bill 32. Indeed, the intention of SB 32 was to modify the current feed-in tariff in terms of price and interconnection so that more customers would take advantage of it. If there are divisions for some elements at 1 MW, a more appropriate approach would be to provide options within a uniform tariff.

2. The Excess Sales Option Must Be Part Of The Section 399.20 Tariff

SCE proposes to eliminate the excess sales option, under which a customer uses onsite the energy required for the customer's operations then sells the excess electricity to the utility. The Commission has clearly established that the excess sales option must remain available to customers/generators. The Commission developed a comprehensive record in R.06-05-027, a predecessor to the instant proceeding, devoted to the excess sales option and its necessity for farmers and other customers with the ability to install a variety of technologies. D.07-07-027 made several Findings of Fact on this matter:

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18. Providing an opportunity for both full buy/sell and excess sales will permit gathering important information regarding the economics of, and market response to, the two approaches.

19. Sellers have reduced incentive to enter into contracts for the sale of their generation at a market rate if then required to buy back that same generation to serve their own on-site needs at a much higher retail rate.

20. The seller's decision on how small or large to make the generation facility may be influenced, if not driven, by the choice of full buy/sell or excess sales.

D.07-07-027 also concluded: "The seller should have the option under the tariff/standard contract to select either full buy/sell or excess sales in the service areas of SCE, PG&E and SDG&E." (Conclusion of Law 21)

In D.10-12-048, adopting the RAM, the Commission also maintained the excess sales option, stating:

> Because there is no technological impediment, and because it meets certain state policy goals, we continue the approach of the Existing FIT by allowing the generator to choose either full buy/sell or excess sales. First, the choice of either full buy/sell or excess sales has been available to QFs since 1979. No evidence has been presented that this policy has been unworkable over the last 30 years. Second, in D.07-07-027, we adopted both options for the Existing FIT.[1] Thus, we allow both the full buy/sell and excess sales transactions for the RAM. For both types of transactions, the full project capacity should apply to an IOU's capacity cap.[2]

SCE continues to attempt to challenge past decisions and re-litigate this issue, which has been clearly decided by the Commission. The Commission must once again direct SCE and the other utilities to continue to offer the excess sales option, for the reasons previously stated by the CPUC.

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[1] We dismissed SCE's application for rehearing of D.07-07-027 on this subject. In doing so, we concluded that the two sales options are consistent with the plain language of the FIT statute. We also said that the two options further the statutory intent of promoting reasonable development of renewable resources to meet multiple state objectives. The two sales options continue to do so, and should be adopted in the RAM to facilitate the same objectives. (original footnote was numbered 84)

[2] D.0-12-048, p. 46.

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3. Pricing Must Be Simple To Understand

SCE's pricing proposal is further evidence that SCE is not interested in facilitating small scale, renewable distributed generation. SCE proposes a price that would fluctuate monthly based on how many projects enrolled in the tariff the previous month. This is a complex proposition, one that does not provide any certainty to the market. At minimum, it will be very challenging for a project owner or developer to obtain financing when the price for the electricity cannot be guaranteed or even predicted. SCE claims that this complex pricing scheme will ensure ratepayer indifference. To the extent that projects do not take advantage of SCE's tariff because the pricing is too complex to guarantee financing, and because it is not easy to understand, then ratepayers will remain indifferent because few, if any at all, will sign up under the tariff.

The utilities and some other parties also propose that the CPUC use the Market Price Referent ("MPR"). Sustainable Conservation and the Green Power Institute, in Opening Comments, discussed why the MPR is not required, appropriate, or relevant for Section 399.20 implementation. There appear to be other parties who share those concerns.

Parties do not here provide specific recommendations on pricing methodology; the Commission will receive proposals for determining a price for electricity from biomass and biogas projects from other parties. We have seen in advance some of their methodology and pricing recommendations and generally support the approach they are proposing. We would also add that the pricing recommendations are relevant to a range of small scale biomass and biogas facilities, such as small gasification plants that have a similar cost structure and regulatory requirements.

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B. The Commission Must Fix Interconnection Problems

In numerous pleadings, in this docket and in predecessor dockets, Sustainable Conservation has demonstrated the importance of expedited interconnection at the distribution level for feed-in tariff projects. On June 29, 2011, Sustainable Conservation filed a Petition to Modify D.07-07-027 on the issue of interconnection ("Petition"). The responses to the Petition identify interconnection as an issue for generators of all sizes,[3] and a concern for many parties.

The Opening Comments reflect similar support for resolving interconnection concurrent with the other issues in 2011. Many parties agree, including the Center for Energy Efficiency and Renewable Technologies, Fuel Cell Energy, AgPower Group, LLC, the Agricultural Energy Consumers Association ("AECA"), CalSEIA, and California Farm Bureau Federation. Even PG&E and SCE, which disagree about where jurisdiction and state policy for interconnection should lie, agree that the interconnection issue must be resolved in 2011.[4]

The Commission has reconvened the Rule 21 Working Group within the past week. In an August 23, 2011, e-mail to parties, staff states:

> …the CPUC is sponsoring settlement discussions as the next step in the "Rule 21 Working Group" process. Our goal is to reach a global settlement on issues regarding distributed generation interconnection to the investor-owned utility distribution system in California…Commission staff's goal is to have the parties reach terms on a comprehensive, multi-jurisdictional interconnection tariff (and associated forms of agreement) by December 31, 2011, for presentation to the Commission for approval, and possible subsequent approval by the Federal Energy Regulatory Commission.[5]

Sustainable Conservation welcomes this level of attention, and emphasizes that Section 399.20(e) requires the utilities to provide expedited interconnection procedures under certain conditions. (Section 399.20 (e)) The Commission must prioritize reform to the existing

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[3] See *Response Of The Independent Energy Producers Association To The Petition Of Sustainable Conservation For Modification Of Decision 07-07-027,* July 29, 2011.

[4] PG&E Opening Comments, p. 23; SCE Opening Comments, pp. 15-16.

[5] E-mail from Rachel Peterson, CPUC Energy Division, to parties in R.10-05-004, R.11-05-005, R.08-08-009, R.08-06-024, and A.08-11-001, August 23, 2011.

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interconnection process that goes beyond just the jurisdictional issues and the need for updating the Rule 21 process. There needs to be fundamental reform of how the utilities process the interconnection applications. The current process does not work and needs to be fixed. We have made recommendations for structural reform to how the IOUs process applications. We re-emphasize here the need for reform.

Parties caution that the utilities' proposed tariffs would allow the utilities to deny service to a project if the project is not online within 18 months. SDG&E, in its draft at section 4.2d removed language contained in the existing tariff which included expectations for reasonable cooperation. Given the documented challenges that projects have faced with interconnection, we foresee a situation where projects are unable to meet the online date because of utility intransigence in facilitating the interconnection process. This is yet another reason the CPUC must resolve the interconnection problems in 2011, as it implements SB 32.

IV. Other Issues

There are several other issues raised in Opening Comments and the proposed utility tariffs that merit comment at this time.

A. Dispute Resolution Should Occur At The CPUC

Both PG&E and SCE propose that any disputes that cannot be resolved informally between the parties be subject to arbitration by Judicial Arbitration and Mediation Services, Inc. We disagree. This approach to arbitration would benefit the IOUs at the expense of the small generators, making customer participation more challenging. The Commission should make clear that any disputes of the feed-in tariff under Section 399.20 will go first to the CPUC's alternative dispute resolution process. Rule 21 already provides for such an approach that can and should be adapted for this program. The California Farm Bureau Federation offered specific suggestions on this in Opening Comments.

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B. The Prohibition On SGIP Participation Should Be Waived For Biogas

Section 399.20(k)(2) directs the CPUC to require reimbursement of funds from incentives programs, unless the Commission "…determines ratepayers have received sufficient value from the incentives provided to the facility based on how long the project has been in operation and the amount of renewable electricity previously generated by the facility." Sustainable Conservation advocated in March 2010 briefs on SB 32 implementation and again in Opening Comments that:

> The Commission should establish a statute of limitations on the refund requirement for those who participated in the Self Generation Incentive Program. Specifically, if you received the funds more than 4 years ago, no refund should be required. Ratepayers have received the benefit of electricity from these renewable projects for many years, and they should not now be penalized for taking advantage of a new tariff opportunity.[6]

SB 32 grants discretion to the CPUC to require a refund. In the case of biogas projects, the Commission should exercise this discretion and waive reimbursement, as described above. This will allow the Commission to encourage diversity in its renewable portfolio.

V. Procedural Issues

A. Hearings Are Not Required

PG&E suggests in Opening Comments that the Commission must hold evidentiary hearings on pricing proposals. The Commission adopted the current feed-in tariff without hearings, relying on workshops and written comments. The Commission cancelled workshops scheduled in this proceeding for August 31 and September 1. Those workshops should be immediately rescheduled or a reasonable substitute, such as a noticed all-party meeting, should be offered. The Commission has used similar processes to develop other renewable energy tariffs, including the feed-in tariff currently in place.

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[6] *Brief of Sustainable Conservation on Implementation of Senate Bill 32*, March 7, 2011, p. 16, in R.08-08-009; *Sustainable Conservation And Green Power Institute Comments To Section 399.20 Ruling June 27, 2011*, July 21, 2011, p. 16, in R.11-05-005.

In any event, no hearings are needed because there are no facts in dispute and the only issues before the Commission in this proceeding relate to policy. The entire record in this proceeding (including predecessor dockets) provides an exceptionally robust factual record that enables the Commission to make the policy determinations required to implement SB 32. A workshop, or some comparable process, would allow for elaboration and clarification of proposals contained in the Opening and Reply Comments; hearings would not be a judicious use of the Commission's time because there is no recognizable need for them.

B. Reservation For Biomass Technologies

Several parties in Opening Comments advocate that the Commission adopt a reservation within the Section 399.20 program for baseload renewable biomass resources.[7] The Sierra Club, for example, urges the Commission to set procurement targets under Section 399.20 for different technology types.[8] Parties base their recommendations on the policy objectives of ensuring a diverse renewable resource portfolio and incubating biogas generation projects at California dairy, food processing, and wastewater treatment facilities, as well as other types of small biomass facilities.

The Commission should consider the various methods proposed by the parties for increasing opportunities for biomass and biogas projects and settle on one of them. For example, the Commission might determine that a separate feed-in tariff program for biomass and biogas is appropriate.

VI. Conclusion

Applying the principles recommended above will guide the Commission to a feed-in tariff that facilitates a diverse portfolio of renewable distributed generation projects. Reserving a

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[7] See Opening Comments of: Sustainable Conservation and Green Power Institute; Agricultural Energy Consumers Association; California Wastewater Climate Change Group; Fuel Cell Energy; Sierra Club of California.
[8] Sierra Club Opening Comments, pp. 7-8.

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portion of the SB 32 capacity for biomass and biogas projects will help guarantee that this emerging technology gains a foothold, thereby contributing to California's leadership on energy issues, and boosting our economy by aiding the agriculture, food processing, wastewater, and related sectors.

The Commission must ensure that it follows the guidance provided by the Legislature in SB 32. Toward this end, a uniform feed-in tariff should apply to all projects under 3 MW; this tariff should offer prices that are differentiated by technology type. The Commission must address interconnection problems concurrent with adoption of the feed-in tariff.

Dated: August 26, 2011

Respectfully submitted,

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For SUSTAINABLE CONSERVATION

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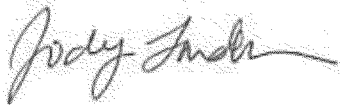
Verification

I am the representative for the applicant herein; said applicant is absent from the County of Alameda, California, where I have my office, and I make this verification for said applicant for that reason; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or 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 August 26, 2011, at Oakland, California.



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