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 THE UTILITY REFORM NETWORK ON THE ADMINISTRATIVE LAW JUDGE'S RULING SETTING FORTH IMPLEMENTATION PROPOSALS FOR SB 32 AND SB2_1X AMENDMENTS TO SECTION 399.20

Matthew Freedman
Marcel Hawiger
The Utility Reform Network
115 Sansome Street, 9th floor
San Francisco, CA 94104
415-929-8876 x304
matthew@turn.org

August 26, 2011

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE ADMINISTRATIVE LAW JUDGE'S RULING SETTING FORTH IMPLEMENTATION PROPOSALS FOR SB 32 AND SB2_1X AMENDMENTS TO SECTION 399.20

Pursuant to the June 27 ruling of ALJ DeAngeles, The Utility Reform Network (TURN) submits these reply comments on the implementation of the Feed-in Tariff (FIT) program authorized by §399.20 of the Public Utilities Code. These comments address some of the issues raised in opening comments and reiterate many of the positions articulated in TURN's opening and reply briefs filed on the same topic in R.08-08-009.

As a threshold matter, TURN urges the Commission to subject any implementation proposal to scrutiny in order to determine whether the resulting program is likely to produce least-cost, viable and timely renewable megawatts. Given the range of options proposed by parties, the Commission should ensure that the FIT program does not produce results that are out-of-whack when compared to other methods of renewable procurement available to the IOUs.

Unfortunately, many parties offer implementation proposals that are completely divorced from the text or intent of SB 32 and SBx2. These parties assume that the legislation provides the Commission with unlimited discretion to design a European-style FIT program complete with technology-specific prices, annual digressions and carve outs for every possible renewable technology. TURN will not respond in detail to these proposals because they are presumptively illegal under the statute.

More importantly, these policies do not translate into a favorable value proposition for ratepayers. Although European FITs have led to the installation of large volumes of renewable capacity, the total costs of these programs are staggering and well beyond anything contemplated in any of the renewable resource planning exercises

SB_GT&S_0424283

conducted by this Commission. Replicating the European experiment in California would lead to significant rate increases and an unwarranted transfer of wealth from ratepayers to FIT project investors. The goal of the FIT program is not to enrich vendors, project developers or commercial property owners. It is to stimulate the development of least-cost renewable energy resources that provide benefits to ratepayers.

I. USING THE MARKET PRICE REFERENT FOR FIT PRICING

Parties make various arguments for, or against, the use of the Market Price Referent (MPR) as the basis for pricing FIT contracts. TURN supports the use of the MPR for FIT pricing and opposes a variety of adders that would effectively mutate this benchmark into a series of technology-specific prices. TURN therefore agrees with the proposals made by PG&E and SDG&E in opening comments.[1]

In particular, TURN agrees with the need to recalculate the MPR prior to using it as the basis for pricing under the FIT program. The 2009 MPR is based on outdated assumptions, particularly long-term natural gas price forecasts that are no longer relevant in light of changed market conditions. The Commission cannot reasonably rely on the 2009 MPR given that the forecast data used in that iteration are now more than 2 years old.

At the opposite end of the spectrum, the Sierra Club argues that SBx2 "expressly deleted the market price referent" from state law and substituted a wholly different "market price" provision in §399.20.[2] In support for this assertion, Sierra cites the Legislative digest to SBx2. Neither the Legislative Digest nor the changes in the statutes support Sierra's argument. The Legislative Digest merely points out that the

---

[1] PG&E opening comments, pages 4, 5, 11; SDG&E opening comments, pages 8-9.
[2] Sierra Club opening comments, pages 5, 11.

SB_GT&S_0424284

market price referent provision was deleted in favor of a different form of cost containment for the RPS program.[3] While the MPR sections were deleted from the portions of §399.15 addressing RPS cost containment, they were added verbatim to §399.20(d). Sierra Club is therefore wrong in asserting that SBx2 altered the "market price" language authorizing the establishment of the MPR.[4]

In a similar vein, Fuel Cell Energy and AECA claim that the MPR is not appropriate because it does not reflect the cost and value characteristics of specific subcategories of renewable generation.[5] These concerns are misplaced because §399.20 does not provide a technology-specific approach to pricing and explicitly excludes many of the "value" adders sought by these parties. If the Commission wishes to promote fuel cells and biogas electric generation, it may be appropriate to create separate procurement mechanisms for these particular above-market renewable technologies. There is no reason to tailor the FIT to the cost characteristics of every type of renewable generation project.

While CalSEIA nominally supports the use of the MPR for "the first round of implementation", it offers numerous caveats and adders that effectively create an pricing benchmark that has almost no practical relationship to the MPR.[6] Instead of relying on long-term market prices for electricity, CalSEIA constructs a "value proposition" analysis that includes the value of avoided T&D, the value of increased reliability, the value of renewable energy credits, the value of blackout avoidance and improved power quality. CalSEIA's analysis of the "value proposition" of

[3] "The bill would delete the existing market price reference provisions, and instead require the PUC to establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard." (SBx2 Legislative Digest, page 4)
[4] Sierra mistakenly assumes that the words "market price referent" previously appeared in the RPS code sections. In fact, the word "referent" was added by the Commission in its implementation of the exact statutory language now included in §399.20(d). The absence of this word in §399.20 is therefore of no consequence.
[5] Fuel Cell Energy opening comments, page 4; AECA opening comments, page 4.
[6] CalSEIA opening comments, page 9.

SB_GT&S_0424285

rooftop solar results in recommended *pre-TOD adjusted* prices of 22 cents/kWh for projects less than 250 kW and 17 cents/kWh for projects in the 250 to 1,000 kW range. These prices are well above observed pricing for small renewable energy projects bidding into recent IOU solicitations.

This "analysis" should be rejected because it is inconsistent with the plain language of §399.20 which enumerates the specific factors that the Commission may take into account when establishing a price. Instead, CalSEIA relies on draft language that was specifically rejected from the final version of SB 32 and does not appear in SBx2. Statutory construction and the ratepayer indifference standard preclude the arbitrary inclusion of other alleged "benefits" sought by CalSEIA.[7]

II. PROPOSALS FOR LOCATIONAL ADDERS SHOULD BE REJECTED

A number of parties suggest that the Commission should adopt a locational adder to compensate FIT projects for a variety of perceived grid-related benefits. TURN opposes any efforts to calculate a locational adder unless it can be demonstrated that the interconnection of a specific generation project results in a reduction of a utility distribution revenue requirement. Absent such a showing, any asserted ratepayer benefits are illusory.

The Interstate Renewable Energy Council (IREC) recommends that all projects get a "locational adder."[8] Rather than calculating the locational benefit of a particular project (if any actually exists), IREC recommends that as a proxy *all* projects "whose capacity addition would contribute to an aggregate generating capacity of less than 100% of minimum load on a distribution feeder" would be exempt from paying any

[7] TURN addressed extensively the legal and factual errors in CalSEIA's analysis in Section 2 of our "Reply Brief on Implementation of SB 32," filed on March 22, 2011 in R.08-08-009. As noted previously, this pleading is part of the record in R.11-05-005.
[8] IREC opening comments, pages 11-13.

SB_GT&S_0424286

"distribution upgrade costs," similar to the existing policy for net energy metered projects.

IREC's proposal violates the ratepayer indifference standard. First, the benefit assumed by IREC depends entirely on the particular upgrade necessary due to a specific project. IREC may be correct that the project will "serve nearby load," but there is absolutely no correlation between any potential benefits of offsetting peak demand on the circuit and the system upgrade costs necessary to interconnect a particular project. IREC's proposal therefore violates the ratepayer indifference standard and is based on a false factual premise regarding the expected financial impact on ratepayers.

By contrast, PG&E argues that there is "no way to determine a generic 'locational adder'" and points out that some projects may be located in remote areas and require grid upgrades to integrate the power rather than providing any ratepayer savings.[9] TURN agrees. It would be illogical to assign generic location-related adders to remote DG projects in areas with substantial generation and little load.

IREC provides no analysis that the subsidy amount due to waiving interconnection and upgrade costs provides any reasonable approximation of the "value" of reducing peak demand, as required by §399.20(e). Particular interconnection costs are likely to depend entirely on the loads and equipment located in vicinity of the project and may have no relationship at all to the "value" of reducing load on that particular feeder.

IREC further argues that ratepayers will not be harmed because "ratepayers pay the cost of distribution system upgrades regardless of whether they are incorporated into

---

[9] PG&E opening comments, page 10.

SB_GT&S_0424287

wholesale generation prices or distribution system charges."[10] This analysis is wrong due to the fundamental difference between projects selling into the wholesale market and projects selling directly to an IOU pursuant to a feed-in-tariff. IREC analogizes to FERC's treatment of transmission network upgrades, noting that the costs of transmission upgrades would impact wholesale rates charged by a generator, so that socializing those costs has less direct impact on ratepayers.

However, the same would *not* be true of the costs of distribution upgrades for projects that will sell their output to an IOU under the FIT. Since the FIT offers a *fixed price*, the generator cannot roll-in upgrade costs into some "wholesale generation price." The FIT price is the price paid to the generator. If the generator has to pay for system upgrades as part of project development costs, it will reduce their net earnings and not impact ratepayers at all. If distribution upgrade costs are socialized as proposed by IREC, such a subsidy will increase ratepayer costs without any necessary benefits.

TURN extensively addressed the issue of a "locational adder" due to peak load reduction in previous pleadings.[11] Our conclusion was that no generalized adder is warranted for alleged deferral of T&D capital spending unless one can demonstrate the required "physical assurance" characteristics of a particular project and show that the project will concretely result in deferred utility spending in the general rate case. Absent such a showing, there will be no ratepayer benefits and the "ratepayer indifference" standard will be violated.

III. RELIANCE ON TECHNOLOGY SPECIFIC PRICING WOULD VIOLATE THE STATUTE AND IS BAD POLICY

[10] IREC opening comments, page 12.

[11] See, Section 3 of TURN's "Reply Brief on Implementation of SB 32," filed on March 22, 2011 in R.08-08-009. OIR 11-05-005 has incorporated the record from R.08-08-009; thus, TURN does not repeat the contents of that filing.

A number of parties propose technology and size-specific pricing under §399.20. For example, Sierra Club suggests at least 12 separate categories and prices that should be established by the Commission.[12] CWCCG proposes an undefined number of "technology specific rates" including one or more tailored for biogas projects.[13] CEERT similarly recommends that each resource type should receive a different price along with unique adders to reflect the "environmental, locational and supply characteristics" of every individual project.[14] In what appears to be a reversal of previously held positions, CALSIEA proposes specific prices for rooftop systems of various sizes with different variants for solar thermal electric technology.[15]

All of these proposals share two key features. First, they violate the explicit pricing provisions of §399.20. Given the Commission's long history of interpreting the exact language in §399.20(d) and crafting the MPR methodology, it would constitute legal error to adopt a highly segmented, technology-specific approach. There is no indication that the Legislature intended to enact such a program. Second, the implementation strategies offered by parties lack specifics and provide no clarity on how the Commission could actually adopt this approach. The amount of work required to litigate the costs of every sub-technology would overwhelm the resources of Commission staff and the parties. It is puzzling that the same parties calling for immediate implementation of §399.20 would propose an approach that could require 12-18 months of additional fact-finding before any prices could be established.

The biggest problem with these approaches is their failure to recognize that the market for renewable energy is dynamic and that both project costs and levelized electricity prices have dropped precipitously in recent years. Had the Commission

---

[12] Sierra Club opening comments, page 9.
[13] CWCCG opening comments, page 4.
[14] CEERT opening comments, page 3.
[15] CalSEIA opening comments, page 9.

SB_GT&S_0424289

undertaken the exercise sought by these parties only two years ago, the FIT prices in place today would be extraordinarily lucrative for sellers and disastrously high for buyers. Given the rapid changes occurring in these markets, it would be foolish to extensively litigate the costs and establish administrative prices based on stale evidentiary records and divergent perspectives about future market trends. The result would be a political compromise that is 100% certain to miss the moving target of real-time pricing trends.

In contrast, the Solar Alliance correctly observes that

> the costs of some renewable technologies – for example, solar PV – are changing rapidly. As a result, the use of technology-specific prices would commit the Commission to a regular administrative process to update those prices. As the Commission knows well from its long history with administratively-determined QF prices, such a process can be litigious and resource-intensive for all parties. In sum, although this option is feasible, it would be time-consuming and administratively-burdensome, and is unlikely to be the simplest or most expeditious means to implement SB 32.[16]

TURN strongly urges the Commission to reject this approach. The entire exercise would only massively complicate what is supposed to be a simple and streamlined program. Most importantly, this approach is wholly unnecessary to promote the goals of the program.

IV. USE OF RAM-BASED PRICING

IREC proposes that the Commission set the FIT price based on the RAM program auction results. Specifically, IREC would use an average of accepted RAM bids and adjust the prices to account for the higher cost of smaller scale projects (≤ 3 MW).[17] This approach would avoid the fundamental flaws in the technology-specific pricing

---

[16] Solar Alliance opening comments, page 8.
[17] IREC opening comments, pages 9-11.

SB_GT&S_0424290

proposed by other parties by ensuring that FIT prices track with RAM results and therefore reflect recent market cost trends. Although IREC's proposal is interesting, TURN has concerns with this approach.

As a matter of law, this outcome may require redefining the long-standing interpretation of the "market price of electricity" in §399.20(d)(2). Since the Commission has repeatedly rejected proposals to interpret this language as referring to the price of renewable electricity, IREC's proposal could force the Commission to abandon this long-held and often affirmed legal interpretation.

If the Commission decides to change this view and conclude that the "market price of electricity" should be based on renewable power, then the best available information comes from the RAM solicitations. These solicitations would provide regularly updated data on the market price of renewable electricity and could satisfy the ratepayer indifference requirement under §399.20(d)(4). Moreover, the reliance on competitive auctions would be relatively transparent and ensures a minimum of administrative process and no need for the Commission to decide which set of litigated cost forecasts should be adopted.

TURN is not endorsing the IREC approach because it remains inconsistent with the widespread understanding that SB 32 and SBx2 intended for the Commission to use the MPR as the FIT price. However, TURN believes that reliance on RAM pricing would be the preferred alternative if the Commission decides that the MPR is not required under §399.20(d). If the Commission does embrace the IREC approach, TURN remains concerned with the adjustment mechanisms proposed for transmission-related costs and the scaling to reflect the higher cost of smaller projects.[18]

---

[18] TURN also opposes the IREC locational adder and reserves the right to address other infirmities in the IREC approach if it is adopted.

Respectfully submitted,

MATTHEW FREEDMAN

___________/S/___________
Attorney for
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: 415-929-8876 x304
matthew@turn.org

Dated: August 26, 2011

SB_GT&S_0424292

VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

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

Executed on August 26, 2011, at San Francisco, California.

__________/s/_______________

Matthew Freedman
Staff Attorney

SB_GT&S_0424293