

**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)

**REPLY COMMENTS OF SIERRA CLUB CALIFORNIA ON THE ADMINISTRATIVE
LAW JUDGE'S RULING ISSUING STAFF PROPOSAL AND REQUESTING
COMMENT ON THE SECTION 399.20 PROGRAM**

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I. INTRODUCTION

Sierra Club California respectfully submits the following Reply Comments in accordance with the October 13, 2011 Administrative Law Judge's Ruling (1) Issuing Staff Proposal, (2) Entering Staff Proposal and Other Documents into the Record, and (3) Setting Comment Dates (Ruling). Sierra Club California is comprised of more than 150,000 members and ratepayers throughout California. Sierra Club California supports successful implementation of effective feed-in tariffs (FITs) that can help meet California's targets for renewable energy.

II. COST-BASED PRICING IS THE MOST EFFECTIVE METHOD FOR MEETING RENEWABLE ENERGY GOALS.

In the Opening Comments filed on November 2, Sierra Club California outlined the advantages and procedural steps for setting the price for a feed-in tariff based on cost.¹ Sierra Club California agrees with parties including CEERT, CALSEIA, Green Power Institute, Sustainable Conservation, Renewables 100, and Fuel Cell Energy that cost-based pricing is the most effective method for meeting renewable energy program goals. The staff proposal is likely to set prices that will not initially yield the needed subscription, and if adjusted without differentiation, could overpay for some projects.

a. COORDINATION WITH INCENTIVE PROGRAMS SHOULD REQUIRE REFUND OF INCENTIVES THAT IN COMBINATION WITH FIT PRICING ARE ABOVE COST, AND SEPERATION FROM CSI.

¹ Comments of Sierra Club California on the Administrative Law Judge's Ruling Issuing Staff Proposal and Requesting Comment on the Section 399.20 Program (hereafter cited as Sierra Club Opening Comments). Available at: <http://docs.cpuc.ca.gov/efile/CM/146860.pdf>
See also: Comments of Sierra Club California on the Administrative Law Judge's Ruling Setting Forth Implementation Proposal for SB 32 and SB 2 1X Amendments to Section 399.20. Available at: <http://docs.cpuc.ca.gov/efile/CM/139902.pdf>

There should be a coordination and calibration with supplemental incentive programs to prevent overpayment. If cost-based pricing is adopted, this would require refund of most or all incentives. If the staff proposal is adopted, the refunds that are necessary to cover reasonable costs of generation should be retained by the applicant. Sierra Club California generally agrees with Vote Solar that there should be a separation between the FIT program and the California Solar Initiative, because they are separate programs that are independently relied upon for renewable energy and environmental benefits.

- b. A STATEWIDE PRICE MAY BE REASONABLE AS LONG AS THERE IS NOT A SIGNIFICANT VARIANCE IN COST AMONG UTILITY SERVICE TERRITORIES.

In concept, PG&E's proposal for a statewide price is reasonable because it adds simplicity to the tariff schedule. The Commission should either verify, or condition this element that there should not be a statewide weighted-average price if the variance due to actual cost factors is too great (i.e. over 5% variance). Deviating too far from the market-based or cost-based price would set a price that would underpay in some areas, and overpay in others, so this does not outweigh the simplicity benefits. However, in a well-designed cost-based FIT, tariffs can be objectively adjusted to compensate for the reasons for cost difference. For example if wind costs are materially higher or lower in various locations due to variance in average wind speeds, a tariff adjustment factor can be applied to compensate for this.

- c. THE COMMISSION SHOULD ADOPT A COST-STUDY MECHANISM TO PREVENT OVERPAYMENT.

In the staff proposal, it is based upon the RAM price and then value adders are added for locational benefits, leaving the possibility for overpayment. A significant advantage of cost-based pricing is the prevention of overpayment through straightforward and transparent calculations of the actual cost.

III. PRICE ADJUSTMENTS SHOULD ENSURE ADEQUATE PROGRAM
SUBSCRIPTIONS

a. PRICE ADJUSTMENTS SHOULD CALIBRATE WITH COST-BASED
PRICING

The goal of adjusting the price is to achieve the subscription levels in a steady timeframe over the course of the program. In Opening Comments, Sierra Club California advanced a proposal for the price to be increased if the program is more than 33 percent below the program capacity for the calendar quarter. The Commission should prepare a cost study and adjust the price to increase to the levels indicated in the cost study within 90 days. The price would be decreased if the monthly allocated capacity of the program is exceeded. Some Parties proposed mechanisms that would increase the price much too slowly to recover an inadequate price within a reasonable amount of time, or could require a near total lack of activity in the program to trigger a price increase.

The Commission should include a price increase mechanism that restores the tariff price to an adequate level within 90 days. The most efficient way to calibrate this is to study cost trends identified in the market. In addition, while Sierra Club California supports price degression to encourage market transformation and contain costs, the Commission should ensure

that price depression does not reduce the price in such large and sudden increments that the decrease lowers the price below levels that would continue adequate subscriptions.

b. THE MARKET PRICE REFERENT SHOULD NOT BE THE BASIS OF AN ADJUSTED PRICE.

Some parties have suggested that the Market Price Referent (MPR) should be used when there is no RAM market clearing price. Sierra Club California has included extensive information in the record regarding the inappropriateness of using the MPR. There is no connection between the MPR and the avoided cost to produce a particular renewable technology. The Commission should study the cost to procure the particular product category in question, and set the price based on this study, rather than importing the cost of natural gas as the basis for setting the price for a renewable energy program.

c. ADJUSTMENTS FOR CONTRACT DURATION

PG&E proposes that the FIT price be adjusted for contract duration based on the RAM auction. This proposal does not detail the method for these adjustments, but appears reasonable. However, the default contract and the vast majority of contracts should be for 20 years, to maximize benefits to ratepayers and program reliability. An IOU should justify on a case-by-case basis the compelling reason that prevents a 20-year contract term.

IV. THE FIT PROGRAM CAPACITY SHOULD NOT DISPLACE RAM PROGRAM CAPACITY.

TURN suggests that the capacity procured through FIT program should reduce the capacity required under the RAM program. This proposal would undermine the distributed

generation programs underway, and is not necessary to comply with federal law. The proposal is arguably to “ensure that the RAM market clearing price qualifies as an avoided cost,” but for the purposes of PURPA compliance,² California can determine an avoided cost based on a state requirement that California procure renewable energy with specified characteristics, and FERC in its Clarification Order does not distinguish between statutory and regulatory requirements to meet this requirement.³ The Commission could incorporate an order into a Decision, pursuant to the Renewables Portfolio Standard, clarifying that the FIT program targets are required. Further, the FIT program is required by Section 399.20, and specifies three different product categories. Under either administrative or statutory sources of law, the Commission may determine that there is a requirement to procure renewable energy.

The avoided capacity is not the capacity included in the RAM program itself, but rather the FIT program required by Section 399.20, and any additional capacity increases pursuant to the RPS and Commission order. The product categories specified in Section 399.20 are identical to the RAM program, and the Commission may use the RAM market clearing price to provide a factual basis as a proxy to determine one measure of avoided costs for the Section 399.20 program.⁴ However, the RAM and Section 399.20 are in fact different requirements, and therefore represent different avoided capacities. Setting the tariff price based on the market information identified from the RAM market clearing price does not require the Commission to reduce the program capacity of the RAM program because requirements from statute or Commission order can form the basis of an avoided cost.

² Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*

³ 134 FERC 61,044 at para. 30.

⁴ While setting the tariff price based on the RAM market clearing price is an option that is compliant with federal law, Sierra Club California does not support this option on policy grounds previously stated.

V. IOUs SHOULD NOT BE ALLOWED TO REJECT AN INITIAL PRICE.

PG&E proposes that IOUs be allowed to reject the initial price, or a Commission procedure for rejection if they find this price to be unreasonable. This proposal should be rejected because of the potential for a complete stall of the program. The price method proposed represents an actual cost that will be procured by utilities to meet RPS goals. The Commission should continually monitor and solicit feedback from parties as the program implementation continues, but the Commission should not delegate the discretion to the IOUs to reject an initial price, leading to a disruption of the program.

VI. IMPLEMENTATION OF STRATEGICALLY LOCATED SHOULD NOT BE OVERLY RESTRICTIVE

Solar Alliance raises valid concerns regarding the restrictive conditions proposed to implement the goal of developing renewable energy capacity that is “strategically located.” Sierra Club California agrees that this goal should not be implemented through restrictions that could limit broad participation in the program, and proposed more inclusive combination of indicators to demonstrate that the capacity is “strategically located.” Limiting participation in the program also limits the market transformation potential for the program, reducing competition and cost-effectiveness with fewer available sites. The Commission should focus on incentives rather than strict requirements for this goal at this time.

VII. THE PROPOSAL FOR COSTS ASSOCIATED WITH ADDERS TO BE SHARED BY CCAs SHOULD BE REJECTED WITHOUT JUSTIFICATION OF ACTUAL BENEFITS AND COSTS.

PG&E proposes for costs associated with adders to be shared by Community Choice Aggregators (CCA's). The Commission should carefully evaluate whether this proposal would amount to cost-shifting in violation of Public Utilities Code 366.2(a)(4), which provides that the "implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation." The Commission should consider which entity benefits from the avoided costs associated with distribution grid updates, and may find that it is the utility that operates the distribution system that accrues the benefits. While CCA's should reimburse actual costs associated with renewable generation on their customers' behalf, this should be balanced with a deduction for benefits and avoided costs that the distribution utility incurs, or the Commission should adopt a billing mechanism that avoids potential cost-shifting.

VIII. COST-BASED PRICING IS THE GLOBAL BEST PRACTICE FOR MARKET TRANSFORMATION AND COST REDUCTION.

As observed in feed-in tariff programs from around the world, cost-based pricing is the global best practice for achieving cost reduction and market transformation. The California Solar Initiative, with pricing that adds up to the cost of certain small systems, has been able to help achieve a price reduction for solar PV of 19 percent.⁵ The price still remains at about twice

⁵ See http://www.californiasolarstatistics.ca.gov/reports/quarterly_cost_per_watt/

the cost per watt as found in Germany, which has achieved this market transformation through a robust feed-in tariff.⁶

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⁶ See German Solar Industry Association statistic data on the German photovoltaic industry, http://sowi.solarfoerderung.abcede.biz/fileadmin/media/pdf/BSW_Solar_Factsheet_1110.pdf

VERIFICATION

I am the Senior Advocate with Sierra Club California and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in this pleading are true.

I declare under penalty of perjury that the matters stated in this pleading are true and correct.

Executed on the **14TH day of November, 2011**, at Sacramento, California.

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