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)

COMMENTS OF L. JAN REID ON RENEWABLE FIT STAFF PROPOSAL

November 2, 2011

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I. Introduction

Pursuant to the October 13, 2011 Ruling (Ruling) of Administrative Law Judge (ALJ) Regina DeAngelis, L. Jan Reid (Reid) submits these opening comments in Rulemaking 11-05-005 concerning the Staff FIT Proposal for the Renewables Portfolio Standard (RPS) program. Opening comments are due on Wednesday, November 2, 2011. I will send this pleading to the Docket Office using the Commission's electronic filing system on November 2, 2011, intending that it be timely filed.

The Ruling requests that parties comment on issues raised in the "October 11, 2011 Renewable FIT Staff Proposal (Staff Proposal) and the other Attachments." (Ruling, p. 2) I comment on these issues in Sections IV-VII below.

II. Summary and Recommendations

I have relied on state law and past Commission decisions in developing recommendations concerning the implementation of Senate Bill 2(1x) (SB2(1X) as it applies to the Feed In Tariff (FIT) program. I recommend the following:[1]

1. The Commission should not seek to ensure that all renewables technologies are commercially successful. (pp. 3-4)
2. The Commission should not treat unregulated energy developers as though they were regulated utilities. (pp. 3-4)
3. The Commission should adopt a market-based FIT program. (pp. 3-4)

[1] Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

4. If the Commission interprets spot market purchases as fixed price contracts pursuant to Public Utilities Code Section (PUC §) 399.20(d)(2)(A), the Commission should consider all spot market purchases, not just purchases made in the CAISO spot market. (pp. 4-5)

5. The FIT generator should not be paid an adder for avoided costs because the avoided cost benefit should properly flow to ratepayers, not to generators. (pp. 8-9)

III. Proposed Findings

My recommendations are based on the following proposed findings:

1. The process of technological failure is an important part of the development of low-cost commercially viable technologies. (p. 3)

2. The Commission has an obligation under Public Utilities Code Section (PUC §) 451 to ensure that rates are just and reasonable. The Commission does not have an obligation to ensure that all plant developers are paid a high enough price to ensure that the developer will be able to recover all of its project costs, with no risk to the developer. (pp. 3-4)

3. The Commission has expressed a preference for market-based solutions to regulatory issues. (p. 4)

4. A spot market is a public market, in which financial instruments or commodities are traded for immediate delivery. (p. 5)

5. Pursuant to new PUC § 399.20(d)(2), the Commission is required to establish an overall market price. However, the Commission is not required to establish a separate market price for different products. (p. 5)

6. The Commission may, but is not required to, set different market prices based on Time of Delivery (TOD) factors. (p. 7)

7. The Commission is not required to set a market price that is lower than avoided costs consistent with PURPA. (p. 7)

8. The RAM decision (D.10-12-048) does not include an adder to account for the avoided cost benefit. (p. 9)

9. Ratepayers are making an investment in the development of renewable resources and should receive a fair return on that investment via avoided costs, resource adequacy, and other benefits. (p. 9)

10. In D.02-03-023, the Commission found that ratepayer expenditures constitute an investment. (p. 9)

IV. Overview of Existing Fit Price and Party Proposals for Amended FIT Program

Staff criticizes a Value Based FIT by stating that: (Staff Proposal, Table 1, p. 4)

> Since price is not based on the actual project's cost, the price may be too high or too low for a specific project. This could result in an unsubscribed program or overpayment to generators.

I assume that Staff believes that a high price is a price that is significantly above a project's cost, and that a low price is a price that is below a project's cost. Renewable developers tend to promote a number of different technologies, not all of which are economic. Every proposed technology will not necessarily be successful in the market. The Commission should not seek to ensure that all renewables technologies are commercially successful.

The process of technological failure is an important part of the development of low-cost commercially viable technologies. When a particular technology fails as a result of exposure to market discipline, this failure frees up resources (e.g., capital resources) for the future development of successful technologies, thereby lowering renewable energy prices over time.

The Commission has an obligation under PUC § 451 to ensure that rates are just and reasonable. The Commission does not have an obligation to ensure that all plant developers are paid a high enough price to ensure that the developer will be able to recover all of its project costs, with no risk to the developer.

The Commission should not treat unregulated energy developers as though they were regulated utilities. In part, the Commission allows regulated utilities to recover all of their reasonably incurred project costs because regulated utilities are subject to significant regulatory risk.

The Commission has wisely expressed a preference for market-based solutions to regulatory issues. In the decision that established the Renewable Auction Mechanism (RAM), the Commission found that: (Decision (D.) 10-12-048, Finding of Facts 1 and 2, slip op. at 81)

> 4. A fundamental assumption underlying the adopted RAM is that competition is, and will remain, vigorous in this market, resulting in just and reasonable rates and optimal resource outcomes.
>
> 5. The RPS statute and program is premised upon employing competition to reach optimal outcomes.

Therefore, I recommend that the Commission adopt a market-based FIT program.

V. CPUC Staff Interpretation of Legislative Guidance

a. Fixed Price Contracts

Staff states that "In setting the price, the CPUC should consider the IOUs' general procurement activities, including, without limitation, RAM auction procurement, RPS solicitation procurement, fossil fuel procurement, or procurement in the CAISO markets." (Staff Proposal, p. 5)

Staff misinterprets PUC § 399.20(d)(2)(A). It is unclear whether or not Staff believes that procurement in the CAISO markets can be used as a proxy for other type of procurement. There is no provision in the law to use the CAISO market as a proxy for other markets. If Staff does not intend for procurement in the CAISO market to be used as a proxy for procurement in other markets, the

phrase "**or** procurement in the CAISO markets." should be changed to "**and** procurement in the CAISO markets."

If the Commission interprets spot market purchases as a fixed price contract, it must consider all spot market purchases, not just purchases made in the CAISO spot market.[2]

b. Long Term Obligations

I agree with Staff's interpretation because Staff's interpretation is identical to the language used in PUC § 399.20(d)(2)(B).

c. Value of Different Electricity Products

Staff states that "The CPUC should consider the value of different energy products and set different market prices for the different products produced by Renewable FIT Generators." (Staff Proposal, p. 6)

New PUC § 399.20(d)(2)(C) states that the Commission must consider "The value of different electricity products including baseload, peaking, and as available electricity." The statute does not require the Commission to set different market prices for different products. New PUC § 399.20(d)(2) states that "The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with an electric generation facility, in consideration of the following: . . ."

Thus, the Commission is required to establish an overall market price. The Commission is not required to establish different products or to establish a separate market price for each product. The Commission should account for the

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[2] A spot market is a public market, in which financial instruments or commodities are traded for immediate delivery.

value of energy in different time periods by applying Time of Delivery (TOD factors to the overall market price. I discuss TOD factors in Section V.d, below.

In the RAM decision, the Commission stated that: (D.10-12-048, slip op. at 3)

> We require each IOU to determine upfront the types of products (e.g. baseload, peaking as-available, non-peaking as-available) they intend to procure under RAM to ensure their procurement is consistent with their portfolio needs. This will also provide developers and investors greater clarity and certainty regarding the market opportunity this program provides.

Thus, the IOUs were allowed to match their RAM procurement to their overall portfolio needs. This is not possible under the FIT program because of the first-come-first-served requirement pursuant to new PUC § 399.20(f).

As modified by SB2 1X, state law requires that: (New PUC § 399.20(f))

> An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

There is no good reason for the Commission to establish different products for different time periods, because the value of energy in different time periods can be accounted for via the TOD factors; and because there is a first-come-first-served requirement.

d. Time of Delivery

Time of Delivery (TOD) factors account for the value of energy during different time periods. TOD factors are a comparison between the estimated price for a particular period compared with the TOD factor for baseload power (7x24). I agree with Staff that the FIT price should be adjusted to account for TOD factors. The TOD factors tend to be higher when demand is higher and energy is more expensive, and lower when demand is lowest. I recommend that the TOD factors for each IOU be identical to those shown in Appendix B of Draft Resolution E-4442.

e. Avoided Costs

Staff states that "To ensure ratepayer indifference, the market price should not exceed avoided costs consistent with the Public Utility Regulatory Policies Act of 1978 (PURPA)." (Staff Proposal, p. 6)

I note that PURPA is not mentioned in the statute. Additionally, avoided costs are discussed only in new PUC § 910, which deals with the CPUC reports to the legislature. New PUC § 910(a) requires the Commission to submit written reports to the Policy and Fiscal committees of the Legislature. In part, the written reports must contain the following information:

> (2) All cost savings experienced, or costs avoided, by electrical corporations as a result of meeting the renewables portfolio standard.
>
> . . .
>
> (4) All cost savings experienced, or costs avoided, by electrical corporations as a result of incentives for distributed and renewable generation.

Therefore, the Commission is not required to set a market price that is lower than avoided costs consistent with PURPA.

f. Offset of Peak Demand

Staff states that "The CPUC can provide an additional payment based on the avoided costs of a Renewable FIT Generator located in a high value location that will generate during peak demand periods." (Staff Proposal, p. 6)

The CPUC could provide an additional payment based on this type of avoided cost, but it is not legally required to do so. The Commission is only required to consider the value associated with a generator being located in a high value location.

VI. Guiding Principles and Overview of Staff Proposal

a. Guiding Principles

In the first item of its Guiding Principles, Staff recommends that the Commission "Establish [FIT] price based on market prices and quantifiable ratepayer avoided costs." (Staff Proposal, p. 6)

As explained in Section VI.a.i below, FIT generators an adder for avoided costs.

VII. Program Elements of Staff Proposal

a. Pricing

i. Determining the FIT Base Price

In the third and fourth bullets, Staff proposes that:[3] (Staff Proposal, p. 9)

- The price paid to the FIT generator will be the executed RAM contract price plus the RAM project's share of the transmission costs for the particular RAM contract. If the FIT generator triggers transmission costs, then the FIT generator should not receive any payment for avoided transmission.

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[3] Corrections to Staff's initial proposal were served via email by ALJ DeAngelis on October 25, 2011.

- Adjust FIT price for TOD factors in order to capture the value of the product to ratepayers.

The FIT generator should not be paid an adder for avoided transmission costs because the avoided cost benefit should properly flow to ratepayers, not to generators. I note that the RAM decision (D.10-12-048) does not include an adder to account for the avoided cost benefit.

Ratepayers pay for the salaries and benefits of utility procurement and planning staff as well as for some of the salaries and benefits of Commission staff. In essence, ratepayers make an investment in the development of renewable resources.[4] Ratepayers have the right to earn a return on their investment through avoided costs, resource adequacy, locational value, and other benefits. Thus, the value of avoided costs becomes ratepayer property, and it would be unfair for the Commission to transfer wealth from ratepayers to unregulated developers.

ii. Locational Adder

Staff recommends that "Generators located in hot spots should receive an additional payment, which should be based on the generator's product category and the estimated avoided or deferred T&D costs and line losses calculated for the hot spot." (Staff Proposal, p. 11)

As I have explained above, ratepayers make an investment in the development of renewable resources. Ratepayers have the right to earn a return on their investment through avoided costs, resource adequacy, locational value, and

[4] In the past, the Commission has found that ratepayer expenditures constitute an investment. (See D.02-03-023, Finding of Fact 118, p. 91)

other benefits. Therefore, I recommend that the Commission not establish a locational adder for FIT generators.

iii. Price Adjustment

Staff recommends that: (Staff Proposal, p. 12)

- The Renewable FIT price for each product category for each IOU should be increased or decreased after a certain subscription (or lack thereof) occurs.
- This type of trigger mechanism will help adjust the Renewable FIT price in the case that the initial base price is too high or too low.

I disagree. The Commission should give FIT generators a fair opportunity to participate in the program, but the Commission should not raise the price to unreasonable levels just to meet the 750 megawatt (MW) goal. The Commission should update the FIT base price once a year using the average base price from the most recent RAM auction.

It is possible that FIT generators will not be able to provide energy at a reasonable price. The Commission does not have an obligation to raise the FIT price to provide profits to FIT generators. The Commission has an obligation under PUC § 451 to ensure that rates are just and reasonable.

SCE has proposed that: (Staff Proposal, p. 13)

> The initial market price (MP) FIT price will be published on the first business day of the first full calendar month following the effective date of this Schedule, and a new MP FIT price will be published on the first business day of each month thereafter. The monthly MP FIT price will be available to eligible applicants for fifteen business days on a first - come, first served basis. Each month, SCE will execute PPAs with eligible applicants who have given written notice to SCE of their acceptance of the MP FIT price in the order of the applicant's MP FIT Number until SCE's cumulative program procurement has reached the lesser of the Cumulative Procurement Target or the MP FIT Cap. Eligible applicants

> who are not awarded a PPA may continue to participate in the MP FIT from month - to - month, and will retain their MP FIT Number, except as otherwise specified in this Schedule.

I agree with the process proposed by SCE but not with SCE's price updating mechanism.

b. Program Cap

i. Calculating the IOU Share of the Program Cap

I agree with Staff's recommendation.

ii. Program Cap Limit

I agree with Staff's recommendation.

iii. Increasing the Program Cap

I agree with Staff's recommendation.

c. Project Size Limit

I agree with Staff's recommendation.

d. Product Categories

As I have explained in Section V.c, there is no good reason for the Commission to establish different products for different time periods, because: (a) the value of energy in different time periods can be accounted for via the TOD factors; and (b) the restraints imposed by the first-come-first-served requirement in PUC § 399.20(f) prevent the allocation of a cap for each product category.

e. Contract

I have no comment on this issue at this time.

f. Contract Terms and Conditions

i. Development Deposit

Staff proposes that "The IOUs should require a $20/kW development deposit for projects less than 1 MW and a $50/kW development deposit for projects between 1 MW and 3 MW." (Staff Proposal, p. 17)

Staff argues that: (Staff Proposal, p. 17)

> A development deposit is needed to ensure sellers are serious and committed to the project. A relatively high development deposit can help mitigate against contract failure. On the other hand, a high development deposit can deter customers developing smaller projects (less than 1 MW) from participating in the program.

It is true that a high development deposit can help mitigate against contract failure, because only the most serious developers will be willing to pay the development deposit. However, in this case it is more important to charge a low development deposit, thereby encouraging program participation. The consequences of contract failure are small, because the project size is small, and the failure of a single contract will not have a significant effect on the overall RPS program.

If the Commission adopts Staff's proposal, the developer of a 1 MW project will pay a development deposit of $20,000 and the developer of a 2 MW project will pay a development deposit of $100,000. Clearly, it is not reasonable for a 2 MW project to be charged a development deposit five times greater than the deposit for a 1 MW project.

Therefore, I recommend that the Commission establish a development deposit of $20/kW.

ii. Performance Standards

I have no comment on this issue at this time.

iii. Telemetry

I agree with Staff's proposal on the telemetry issue.

iv. Other Modifications to PG&E's Contract

I have no comment on this issue at this time.

g. Transition From Existing FIT to Amended FIT

Staff points out that "Silverado has suggested that developers that submitted an interconnection under SCE's CREST program before August 26, 2011 should be able to receive a FIT contract for projects up to 3 MW at the current MPR." (Staff Proposal, p. 19)

Staff recommends that: (Staff Proposal, p. 19)

> Once the new rules are in place, all generators will be subject to the same rules. The only exception is the location restriction, which is articulated in Section VII, j of this proposal.

I agree with Staff's recommendation. Draft Resolution E-4442, which concerns 2011 Market Price Referent (MPR) values, was issued on October 31, 2011. The 2009 MPR values were established in Resolution E-4298. The 2011 values are significantly lower than the 2009 values. For 20-year contracts starting in 2012, the MPR changed from $105.07/MWh in Resolution E-4298 to $89.56/MWh in Draft Resolution E-4442, a decline of 14.76%. Thus, developers have a strong financial incentive to receive energy payments under the previous rules.

It is important that all FIT generators operate under the same rules. Otherwise, it would be possible for two essentially identical generators to be paid different prices for their output even when that output was delivered during the same time periods.

h. Interconnection

i. Interconnecting Tariff

I agree with Staff's recommendation.

ii. Expedited Interconnection

Staff proposes that the Commission: (Staff Proposal, p. 20)

> Defer addressing this language on expedited interconnection, since these issues should be resolved in the Interconnection OIR/Distribution Interconnection Settlement. If these issues are not resolved through these process [Staff typo???] in a timely manner, than this proceeding can revisit this issue in 2012, as initially proposed in the ALJ's June 28, 2011 Ruling.

This issue should not be deferred as suggested by Staff. PUC § 399.20(e) requires the IOUs to (a) provide expedited interconnection procedures if the generator provides electricity which offsets peak demand on the distribution circuit; and (b) determine whether the FIT generator will adversely affect the distribution grid.

Since the statute requires expedited interconnection procedures, deferral is not an option. Therefore, I recommend the following:

1. The Commission should order the IOUs to submit a proposal to provide expedited interconnection procedures.
2. When an FIT generator applies for the new tariff, the IOUs should determine whether or not the generator will adversely affect the distribution.
3. If the FIT generator will adversely affect the distribution grid, the generator will be deemed ineligible to provide service under the tariff.

Staff states that:

> The IOUs have stated that in order to count a generator for RA, the California Independent System Operator (CAISO) must deem the generator deliverable. In order for this to occur, the CAISO must complete a deliverability study, which will take almost two years to complete and could result in costly upgrades. In staff's view, this type of study is overly burdensome from a time and cost perspective for small generators that are strategically located. Staff rejects the IOUs' proposal that all FIT generators must be deliverable in order to participate in the program. Instead of offering a proposal, staff seeks proposals from parties on how to address this statutory requirement.

Additional proposals are not necessary. PU Code § 399.20(i) states that "The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380." The California Independent System Operator's (CAISO's) deliverability procedures do not override state law.

There can be no doubt that a deliverability study is overly burdensome for FIT generators. The issue of deliverability is essentially moot, because generators will not be paid unless their output is deliverable to the distribution system.

Therefore, I recommend that the Commission encourage the CAISO to waive the deliverability requirement for FIT generators.

iii. Project Viability and Queue Management

I recommend that the bid fee be waived for FIT generators. FIT generators would already be subject to a development fee of between $20,000 and $100,000 under Staff's proposal.

A bid fee could help mitigate against contract failure, because only the most serious developers would be willing to pay the bid fee. However, in this case it is more important to waive the bid fee, thereby encouraging program participation.

The bid fee is not a requirement in the RAM program, and there is no good reason that a bid fee should be levied in the FIT program.

viii. Seller Concentration

Staff states that: (Staff Proposal, p. 21)

> CalSEIA and PG&E suggested a seller concentration cap of 10 MW per seller. Staff agrees that there should be limit, but recommends a different metric. Staff proposes a seller be limited to 25% of an IOU's total capacity cap.

I agree with CALSEIAand PG&E on this issue. The purposes of a seller concentration limit are (a) to prevent larger entities from dominating the FIT program to the detriment of small developers; and (b) to ensure that the FIT program contains a diverse mix of electricity generation plants. Staff's recommendation is simply too high and does not accomplish either of these goals. Therefore, I recommend that the Commission adopt a seller concentration limit of 10 MW per seller.

VIII. Conclusion

The Commission should adopt my recommendations for the reasons given herein.

* * *

Dated November 2, 2011, at Santa Cruz, California.

/s/

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VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are 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.

Dated November 2, 2011, at Santa Cruz, California.

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