

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
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OPENING COMMENTS OF THE UTILITY REFORM NETWORK
ON THE STAFF FEED IN TARIFF PROPOSAL
FOR IMPLEMENTING SB 32 AND SBx2



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Pursuant to the October 13 Ruling of ALJ DeAngelis, The Utility Reform Network (TURN) submits these opening comments on the “October 13, 2011 Renewable FIT Staff Proposal” (“Staff Proposal”) and the other documents attached to the Ruling. The Ruling requests that parties organize their comments corresponding to the number system in the Staff Proposal. TURN thus organizes our comments based on the headings used in the “Program Elements” Section VII of the Staff Proposal.

1. RAM PRICING

1.1. The Use of the RAM Market Clearing Price is Legally Deficient Under New SB 1x2

The Staff Proposal recommends using the market clearing price from the Renewable Auction Mechanism (“RAM”) as the basis for the Feed In Tariff (“FIT”) price based on the argument that “renewable FIT generators are avoiding procurement of other renewable generators,” and thus such a price qualifies as an avoided cost under PURPA.

The Staff Proposal concludes that the requirement of § 399.20(d)(2)(A)¹ for determining a market price for the FIT program is met by considering any and all IOU procurement activities, including the RAM auction. This interpretation of the same language as was previously contained in § 399.15(c) runs counter to several

¹ This section authorizes the market price to be based on “the long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation’s general procurement activities as authorized by the commission.”

prior Commission decisions, which rejected the use of renewable contracts as a basis for setting “the long-term market price of electricity for fixed price contracts.”² The Commission consistently used the Market Price Referent (“MPR”) as the price required under § 399.15(c). TURN explained at length in our joint opening comments that normal rules of statutory construction support continuing the use of the MPR as the FIT price when exactly the same language was moved from § 339.15(c) to § 399.20(d)(2).³

1.2. FIT Contracts Should Count Toward RAM Goals to Ensure that the RAM Market Clearing Price Qualifies as an Avoided Cost

Notwithstanding this legal argument, TURN previously stated that if the Commission adopts a different interpretation, the next best solution is to use the results of the RAM solicitations as a basis for a value-based FIT price. However, in order to truly satisfy the “avoided cost” requirement and make “the Renewable FIT a subset of RAM,”⁴ the Commission should require the MW contracted under the FIT program to count toward fulfillment of the 1000 MW goal of the RAM program.

If the FIT contracts do not count towards the RAM targets, FIT procurement can only displace general RPS procurement. There is no inherent relationship between the RAM market clearing price and the average weighted prices for utility-scale projects selected through the RPS solicitation. Thus, the proposed FIT price could not be an accurate proxy of avoided cost for general RPS procurement. It only qualifies as a true avoided cost if it displaces renewable procurement under the RAM program.

² See D.03-06-071, D.04-06-015, D.05-12-042, D.07-09-024.

³ See, TURN/CCUE Opening Comments, July 21, 2011, p. 4-5.

⁴ Staff Proposal, p. 7.

1.3. Transmission Component of FIT Price

The Staff Proposal states that the price to be paid to a FIT generator should be “the executed contract price plus the project’s share of the transmission costs for the particular RAM contract.”⁵ Staff asks parties to comment on how to “adjust the transmission part of the total RAM price if the generator only has a Phase 1 or System-Impact Study, since the results of these studies are usually an overestimate of actual transmission costs?”⁶ This proposal must be rejected as it unfairly imposes costs on ratepayers.

The proposal to add “transmission costs” to the contract price is presumably meant to address the disparity in the treatment of network upgrade costs for projects connecting to the distribution system versus the transmission system. Developers connecting to the distribution system will pay for upgrade costs, while transmission network upgrades are initially the responsibility of the project developer but are repaid by ratepayers over a five year period. Projects connecting to the transmission system thus entail additional ratepayer costs not reflected in project costs (and thus bid prices under the RAM). In the RAM proceeding the Commission required the IOUs to include upgrade costs only in the “evaluation” of RAM bids, *not* in contract prices.⁷

However, paying an additional “price” for a project that requires transmission network upgrades is a wholly inappropriate solution to this unequal treatment of network upgrade costs. Since ratepayers will pay for the transmission upgrade costs

⁵ Staff Proposal, p. 9.

⁶ Staff Proposal, p. 24, Question #2.

⁷ Resolution E-4414, August 18, 2011, p. 18.

separately, it is a perverse outcome to make them pay twice by adding those costs to the contract price.

The underlying issue is that there may be an “unequal playing field” whereby small projects connecting to the transmission system (under WDAT or GIP) have a financial advantage. Nevertheless, there are other rationales for such treatment on the transmission side. This issue cannot be remedied by forcing ratepayers to double pay. Rather, it should be addressed as part of the ongoing Rule 21 reform process.

1.4. Locational Adders

The Staff Proposal recommends that the E3 methodology be applied to “identify the hot spots that receive the locational value estimated in the E3 analysis.”⁸ TURN has concerns regarding the E3 methodology used to value locational benefits. TURN also has recommendations for clarifying the Staff Proposal, and for ensuring that the alleged benefits due to deferred capacity upgrades actually materialize to benefit ratepayers. Otherwise, the locational adder would simply raise costs and result in a price that violates the avoided cost and the ratepayer indifference standards.

TURN understands the Staff Proposal would only apply locational adders to those areas identified by the utilities as “hot spots.” The staff proposes that SCE identify hot spots that cover 10% of its load, while PG&E and SDG&E are supposed to identify hot spots that cover 5% of their load. TURN agrees that any locational adder should apply *only to those projects* located in identified hot spot areas, which in theory represent locations where reduced “load” can defer planned capacity projects.

⁸ Staff Proposal, p. 11.

However, TURN also cautions that the “hot spot” policy is likely to focus developer attention almost exclusively on high value circuits, resulting in long interconnection queues. The Commission should ensure that the current negotiations concerning interconnection and Rule 21 develop appropriate mechanisms to facilitate an orderly process for prioritizing projects and bumping projects that fail to meet required milestones.

The Staff Proposal asks parties to comment on “what should the CPUC do to increase the probability that a distribution system upgrade will be deferred.”⁹ This is absolutely the critical question for ratepayers. TURN strongly recommends that the Commission *first* ensure that there is an answer to this question *before* authorizing any distribution location adders.

E3 described the general methodology in the presentation and methodology description included as Attachments C and D to the ALJ Ruling. The methodology uses confidential IOU capital investment forecasts for specified regions to calculate a value for deferred investments due to a specified load growth reduction. For example, Edison provided a 9-year capital budget for investments by SSYS ID areas.”¹⁰ The calculation of avoided costs for Peaking as Available results in a distribution of avoided costs by planning areas. An aggregation of these avoided costs for selected areas results in a profile of avoided costs as a % of peak load.¹¹ For SCE, this graph results in an average hot spot value of \$0.0775/kWh for up to 10% of SCE’s territory.¹² The methodology description concludes that given that PV installations have longer useful lives than the time frame of forecast investments, the methodology should produce a conservative value of avoided distribution costs.

⁹ Staff Proposal, p. 24, Question #3.

¹⁰ E3 Presentation, September 26, 2011, p. 9.

¹¹ E3 Presentation, September 26, 2011, p. 25.

¹² E3 Presentation, September 26, 2011, p. 26.

It is not clear whether there is any direct link between the confidential data and methodologies used by E3 to calculate the distribution adder and the load growth capital projects forecast in utility rate cases. For example, in its current TY 2012 rate case, SCE forecast load growth capital expenditures of \$2.298 billion due to 21 transmission substation projects, 73 distribution substation projects, and 27 subtransmission lines projects.¹³ While each project is driven by projected “load growth,” the projected operating date of “June 1, 2011” or “June 1, 2012” is clearly a forecast exercise meant to represent revenue requirement forecasts more than actual construction timelines. It is not apparent that the exact timing of capital expenditures for ratemaking purposes depends exactly upon the timing of load growth. The reality is that SCE must implement lumpy capital investments in an orderly fashion depending on need as well as workforce and practical considerations.

As a result, TURN is extremely concerned that “deferrals” of capacity additions due to changes in demand forecasts used in the E3 model will not flow through as practical changes to capital project forecasts used in the rate case or the expected deferral in actual capital expenditures. TURN has not yet seen the “confidential database” provided to Energy Division and E3 that forms the basis of the E3 methodology and have therefore not been able to review the actual spreadsheet calculations. More review of this data must occur before the Commission can rely upon it to establish values that are incorporated into pricing.

Moreover, based on the presentations it does not appear that the E3 methodology addresses the fundamental issue that the impact of a peaking solar generator on a circuit depends entirely on the timing of the peak load on the particular circuit or

¹³ See, A.10-11-015, SCE-3, v. 3, Part 01 & 02, Testimony of R. Woods re. Load Growth Programs.
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feeder. Residential circuits peak later in the day than commercial circuits, and later than system peak. While solar PV output may match peak load on a commercial circuit, it will not match the peak load on a residential circuit. Thus, solar PV output may do very little to avoid capital investments if peak demand on a residential circuit is not actually reduced through the addition of the generation.

If locational adders are going to be applied, the Commission must guarantee that the savings associated with deferred capital investments will flow through to ratepayers. The Commission must establish a process that will ensure some feedback loop between the “hot spots” and avoided costs developed by the IOUs in response to the Staff Proposal and the capital forecasts for load growth in future rate cases. TURN recommends that the Commission schedule additional workshops to determine how the proposed locational adders relate to utility load growth investments proposed in rate cases. The first step is to provide transparency to the E3 methodology. The next step will be to ensure a feedback mechanism between the “hot spots” that are to be defined by utility distribution engineers¹⁴ and a method of flowing through these assumptions into rate case load and capital spending forecasts.

1.5. Price Adjustment

Staff proposes to set the price, presumably based on the first RAM auction results, and then adjust the prices based on market response. Staff does not propose specific details concerning the frequency, size and triggers of the adjustments, but rather summarizes the proposals of four parties and asks for comments on these issues.¹⁵

¹⁴ Staff Proposal, p. 11.

¹⁵ Staff Proposal, p. 25, Question #7.

Staff describes “automatic price adjustment” based on market subscription as an “elegant and simple solution” to market response.¹⁶

While calculating an automatic price change is not complex, it requires a subjective choice regarding the adjustment amount. An automatic price adjustment due to program subscription levels – whether based on a percentage change or an absolute \$/MWh change – cannot correlate with actual market price changes. Market prices for renewable products over the past decade illustrate that actual changes tend to be sudden and large, interspersed with periods of relative calm, depending on lumpy supply/demand balances of both input materials and output products. For example, solar panel prices (as well as material cost inputs for both renewables and conventional generation) increased rapidly between 2006-2008 due in part to silicon shortages and overly generous FIT pricing in Spain. Panel prices then decreased sharply in 2009-2010 due to increased Chinese supply and decreased demand.

Any monthly or quarterly automatic FIT step changes will necessarily lag behind market changes. This lag may become quite large upon market reversals. For example, if panel prices continue to decrease, resulting in large FIT subscriptions, the FIT price would be adjusted downwards. If there is subsequently a large price reversal (for example, due to a sudden silicon shortage), it might take a long time for gradual changes to catch up with market conditions.

TURN recommends that instead of automatic changes the Commission adjust the FIT price once per year based on an average of the prior two RAM auctions. The RAM

¹⁶ Staff Proposal, p. 12.

program is currently scheduled to last only two years.¹⁷ However, depending upon actual subscriptions, the term may be longer. If, on the other hand, the RAM program does terminate after two years, the FIT price should be adjusted quarterly based on market response. TURN supports Edison's proposal which provides the most detail to determine the need for, and amount of, any automatic price adjustment.

2. Program Cap

3. Project Size and Multiple Projects

The Staff Proposal limits project size to 3 MW but does not discuss how to prevent daisy-chaining of multiple projects so as to evade this size restriction. Such an outcome is quite likely without strict rules and penalties to the contrary. In our opening comments TURN/CCUE recommended that the IOUs should be given the authority to deny a tariff request pursuant to §399.20(n) if the project appears to be part of a larger overall installation by the same company or consortium in the same general location.

The Ontario Power Authority has adopted Rule 7.3(e) to allow the Authority to reject projects that have been divided into smaller projects. The Rule allows the OPA to make this determination based on "The IOUs should be given the authority to deny a tariff request pursuant to §399.20(n) if the project appears to be part of a larger overall installation by the same company or consortium in the same general location."¹⁸

¹⁷ Obviously, market changes over just the next two years are unlikely to be captured adequately by any adjustment mechanism. TURN recommends, however, that the FIT mechanism be adjusted based on the probability of a longer-term program necessary to meet the 750 MW cap.

¹⁸ Ontario Feed-in Tariff Rules, Version 1.5.1, July 15, 2011, Sec. 7.3(e). Available at <http://fit.powerauthority.on.ca/eligibility-requirements>.

It is our understanding that SMUD's first solicitation under its FIT did not include any restriction on daisy-chaining. It resulted in multiple contracts with Recurrent Energy for 88 MW of solar, much of which was located in essentially two areas. TURN does not fault Recurrent, and we presume that one of the reasons they could successfully compete at the SMUD tariff price was due to the large actual size of the projects. However, such large projects should bid into the RAM both to maximize ratepayer benefits and to comply with statutory requirements.

TURN recommends that the Commission add a clause in Section 4.3 of the proposed contract ("Seller Representation") that requires the seller to represent that the project represents the only project being developed by the seller any a single or contiguous piece of property.

4. Product Categories

The Staff Proposal envisions setting three separate prices based on the market clearing price for each product category (baseload, peaking as available, non-peaking as available). Staff asks how the price should be set "if an IOU does not execute any contracts in one or more product categories?"¹⁹

Staff's concern is valid. There is a strong possibility that the IOUs may not execute contracts for some product categories. While PG&E intends to solicit approximately 35 MW from each product category, SCE and SDG&E indicated a preference to procure only peaking products. The Commission required SCE and SDG&E to target a minimum of 5 MW and 3 MW respectively for each product category; but the rules also authorize each IOU to procure plus or minus 20 MW in each product category in

¹⁹ Staff Proposal, p. 24, Question #1.
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each auction.²⁰ Thus, the RAM rules may result in contracts only for peaking products, or for only a very few contracts for other products. Any separate FIT price for a product category with very few contracts (or no contracts at all) may not reflect a competitive market. Even using the “market clearing price” for one product category will prove generous since it will exceed the average cost of procurement under RAM.

TURN recommends that the proposal be modified to set *only one* market clearing price, based on the RAM product category with the most contracts. Setting a separate price for each category may result in prices that do not reflect a competitive market and are set by a small number of bids.

TURN understands that there may be technologies and product categories that presently have higher costs. However, the primary intent of SB 32 is to promote small renewable distributed generation strategically located close to load centers so as to avoid transmission and distribution upgrades.²¹ The legislature explicitly rejected attempts to create technology-specific cost-based prices based on the opposition of TURN, the IOUs and other parties. SB 32 did not include carve-outs or set-asides for particular technologies, and the Commission should reject efforts to mutate this program into something far removed from the expressed intent of the Legislature.

Under the RAM program the utilities selected category ranges based on an evaluation of portfolio procurement needs, so as to best integrate small renewable procurement with total portfolio procurement. The IOUs will also develop maps to encourage project locations in optimal areas. There are no similar requirements for

²⁰ Resolution E-4414, August 18, 2011, p. 10-11.

²¹ For example, SB 32, Section 1 (a) and (f).

small FIT projects to integrate into the procurement process. Locational differences are addressed by the proposed locational adder.

Thus, there is no need to adopt different prices for different “product categories” for small renewable projects that will qualify for the FIT tariff. The Commission should establish one price for all small distributed generation projects.

5. Contract

6. Contract Term and Conditions

7. Transition from Existing FIT

8. Interconnection

9. Project Viability and Queue Management

10. Program Location Restrictions

11. Data Reporting

12. Other Issues

13. Response to Proposal Questions

TURN already addressed certain questions in the responses provided above.

13.1. Resource Adequacy

TURN provides no opening comments on this issue.

13.2. Refund Options

The Staff Proposal does not appear to address the requirements of §399.20(k) but does ask parties to comment concerning refund time periods, amount and interest rates.²² TURN/CUE had previously recommended deferring implementation of this provision so long as projects that have received incentives are ineligible to participate

²² Staff Proposal, p. 26, Questions #14-16.

in the FIT until the refund process is finalized. TURN does not provide any specific recommendations concerning refunding at this time.

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Respectfully submitted,

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VERIFICATION

I, Marcel Hawiger, 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 an 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 November 2, 2011, at San Francisco, California.

_____/S/_____
Marcel Hawiger
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