

**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 SUSTAINABLE CONSERVATION AND
THE GREEN POWER INSTITUTE ON
REVISED STAFF PROPOSAL FOR A FEED-IN TARIFF**

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I. INTRODUCTION

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the October 13, 2011 Ruling of ALJ DeAngelis, Sustainable Conservation and the Green Power Institute (“Parties”) submit these comments on the *Renewable FIT Staff Proposal – Revised Draft* (“Staff Proposal”). After long requesting that the Commission focus on implementing Senate Bill 32 (“SB 32”), we appreciate the attention that is now being paid to this important tool for bringing more distributed renewable electricity online. The feed-in tariff (“FiT”) that SB 32 requires can, if properly implemented, help California meet Governor Brown’s call for a much greater contribution from distributed generation and the California Energy Commission’s goals for developing in-state biogas resources from agriculture and other sectors. As currently constructed the Staff Proposal will not lead to a diversified distributed generation portfolio, which has long been stated goal. In order to achieve these goals, the Commission must adopt a true FiT that is differentiated by technology type and based on specific avoided costs. The Staff’s proposal to use the results of an auction that was expressly not intended to function as a FiT must be rejected in favor of technology-based avoided costs.

These comments focus first on the Staff Proposal, specifically the Guiding Principles and the pricing proposal. We then turn to the specific questions posed by Staff at the conclusion of the Staff Proposal.

II. GUIDING PRINCIPLES

The Staff Proposal, at pp. 6-7, presents twelve guiding principles. Sustainable Conservation has previously recommended four simple principles for the FiT:

1. The program should be easy to access, understand, and implement.
2. The Commission must ensure that diverse resources are able to participate.
3. This program must recognize the contributions of different renewable technologies and the importance of resource diversity within California’s renewable energy portfolio.

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).

These principles encompass the principles enumerated in the Staff Proposal and are sufficient. If the Commission feels compelled to adopt the specific Guiding Principles put forward in the Staff Proposal, we suggest the Commission incorporate them into the Principles recommended by Sustainable Conservation as follows:

1. The program should be easy to access, understand, and implement.
 - Establish prices based on market prices and quantifiable ratepayer avoided costs (Staff recommended Principle 1)
 - Increase program transparency (Staff recommended Principle 4)
 - Ensure administrative ease and lower transaction costs for the buyer seller, and regulator (Staff recommended Principle 6)
 - Strive for uniformity across the IOUs (Staff recommended Principle 10)
2. The Commission must ensure that diverse resources are able to participate.
 - Comply with state and federal law and minimize legal risk. (Staff recommended Principle 5)
 - Ensure all RPS-eligible renewable resources are able to participate (Staff recommended Principle 11)
3. This program must recognize the contributions of different renewable technologies and the importance of resource diversity within California’s renewable energy portfolio.
 - Efficiently use existing transmission and distribution infrastructure (Staff recommended Principle 9)
 - Contain costs and maximize value to the ratepayer and the utility (Staff recommended Principle 2)
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).
 - Create stable and sustainable market and regulatory certainty (Staff recommended Principle 3)
 - Use lessons learned from existing and prior programs to inform program rules (Staff recommended Principle 8)

We suggest that recommended Staff Guiding Principle 7, “Harmonize FIT with existing programs, including the RPS, RAM, IOU Solar PV Programs, combined heat and power (CHP) FIT, California Solar Initiative (CSI), Small Generator Incentive Program (SGIP), and net metering” is neither necessary nor appropriate. SB 32 states the Legislature’s intent to

“encourage electrical generation from eligible renewable energy resources” (Public Utilities Code 399.20(a)). Nowhere in SB 32 is there a directive for the Commission to apply the same administrative procedures and requirements to programs that are designed to facilitate the deployment of a variety of renewable technologies: technologies that differ in size, technical operating characteristics, fuel source, and a host of other ways. The various programs that this proposed Principle would “harmonize” are very different from one another, and focus on vastly different types of resources. For example, the RAM requires projects to bid in to an auction, the California Solar Initiative (“CSI”) is targeted at solar technologies which operate predominantly in an intermittent mode and offers them a pre-determined incentive that declines as enrollment in the CSI program increases, the Self Generation Incentive Program is targeted toward technologies that are still developing market presence.¹ The CSI provides very simple enrollment and interconnection, while the other programs have been subject to delay and litigation by the utilities, particularly the combined heat and power program authorized by AB 1613. The Renewable Auction Mechanism (“RAM”) is new, the Commission does not have any experience to date with it. Trying to “harmonize” the FiT with this panoply of programs creates a disadvantage for the customers who have the ability to install distributed generation resources if the process is easy to access. The Commission should abandon proposed Principle 7.

The Commission also should not adopt Staff recommended Principle 12: “Increase probability of successful projects by establishing project viability criteria.” The Staff Proposal would use the project viability screen to eliminate projects – screen them out and prevent entry into the market– rather than using it to determine the probability of a project succeeding. Parties would support a methodology that estimates the probability of a project succeeding, and

¹ See D. 11-09-015, Finding of Fact 1: “The intent of SGIP is to encourage deployment of DG to reduce peak demand, give preference to new renewable energy capacity, and ensure deployment of clean DG technologies.” (emphasis added)

discounts the expected output of the project accordingly. That unfortunately is not in the Staff Proposal. The project viability criteria recommended are those used in the RAM which, as will be explained below, is not an appropriate model for the FiT.

III. COMMENTS ON PRICING PROPOSAL

A. *The Commission Can Find Better Benchmarks Than RAM*

i. The Commission Has Already Said RAM Is Not Appropriate

The Staff Proposal suggests that the FiT offer three market prices based on different types of renewable resources under 3 MW: baseload, peaking as-available, and non-peaking as-available. We continue to interpret SB 32 and relevant decisions and policies from the Federal Energy Regulatory Commission and this Commission as allowing the Commission to establish separate prices for different renewable technologies. This topic has been briefed in detail by other parties to this proceeding, including the Center for Energy Efficiency and Renewable Technologies (“CEERT”), the Agricultural Energy Consumers Association (“AECA”), and Fuel Cell Energy. We will not repeat that analysis here. Establishing separate prices for different renewable technologies is a much better policy outcome that will enable specific technologies to help diversify California’s renewable energy portfolio.

We can understand that, given the Staff’s preference to “ensure administrative ease,” consolidating various technologies into three “buckets” may offer administrative simplicity. The Staff’s proposed benchmark, however, is patently inappropriate and violates the Commission’s own stated policies. The Staff would have the Commission take the results of the RAM, an auction whose results will only be known for the first time later this month, and establish those results as the pricing benchmark for the FiT. The Staff Proposal suggests “...RAM represents

the most relevant market segment that the Renewable FIT generators are avoiding since RAM is available for projects between 500 kW to 20 MW.”²

This logic in the Staff Proposal ignores the Commission’s stated intent when it adopted the RAM:

“RAM evolved from the Commission’s inquiry into expanding the existing feed-in tariff program for generators 1.5 MW and below, pursuant to Public Utilities Code Section 399.20 and Decision 07-07-027. However, RAM is distinct from a feed-in tariff as that term has traditionally been used. While it is a streamlined contracting mechanism and utilizes a standard contract, RAM relies on market-based pricing, utilizes project viability screens, and selects based on least cost rather than a first-come, first-served basis at an administratively determined price.”³

D.10-12-048 further recognized there are different circumstances for projects under 5 MW when it established lower development deposits for projects under 5 MW.⁴

Long before the Commission adopted the RAM, the Legislature recognized, when it expanded the FiT from 1.5 MW to 3 MW, that small projects can be encouraged to participate by creating different circumstances for them. Section 399.20(c) states: “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.” The Legislature did not intend for projects under 3 MW to compete in auctions. It is therefore difficult to see how using the results of an auction process in which those technologies are not expected to participate would provide an adequate benchmark.

ii. RAM Will Not Provide An Accurate Benchmark Price

The RAM will not provide the Commission with an accurate price. In the first auction, which is occurring now, the prices bid will include tax incentives available through the end of

² Staff Proposal, p. 9.

³ D.10-12-048, p. 1.

⁴ D.10-12-048, Finding of Fact 34.

this year as part of the American Recovery and Reinvestment Act. These prices therefore will reflect neither actual costs nor the price for an identical project that bids after the end of this year.

For biogas technology, as Sustainable Conservation and other parties have stated repeatedly, we do not expect biogas projects to bid into the RAM. Were the Commission to adopt the Staff Proposal, the benchmark would be based on a technology with different cost and possibly size characteristics. As we have seen with the existing FiT, generators are not willing to incur project development costs if those cannot be recovered through project operations.

iii. Cost-Effectiveness Is a Moving Target

The presentations from the September 26 workshop discuss various cost-effectiveness metrics the Commission uses in other venues, and recommends applying them to the FiT. We note that a recent ruling from Commissioner Ferron in the energy efficiency policy rulemaking, R.09-11-014, questions those current cost-effectiveness metrics. The Ruling states the Commissioner's intent: "Among other things, we will consider the appropriate cost tests to apply to the range of EE programs considered in the portfolio planning process. Current cost-effectiveness tests appear to produce results that favor shallow EE measures such as CFLS, appliance recycling and other short term measures. As part of the second phase of the update we will review new or alternative cost-effectiveness frameworks or methodologies that capture the costs and benefits of long-term market transformation activities." (*Assigned Commissioner's Ruling and Scoping Memo Regarding 2013-2014 Bridge Portfolio and Post-Bridge Planning, Phase IV*, pp. 10-11, October 25, 2011, in R.09-11-014) The Commission should not adopt cost-effectiveness tests in one proceeding that it is about to abandon in another.

B. Proposal for Determining Biogas Prices Under a FiT

Parties understand that the staff is looking for something specific to use as a benchmark for base price, before any of the additional attributes the FiT must include pursuant to Section 399.20(d)(1). Parties have argued previously,⁵ and we continue to maintain, that basing the price on costs is the most effective way to induce participation in the program, and can be structured to meet the legal and regulatory requirements of both this Commission and the Federal Energy Regulatory Commission. We note that most of the successful FiT programs in other states and countries use cost-based pricing.

In our July comments, Parties suggested that the three recommended categories for bidding in to the FiT may not be sufficient to realize the opportunities certain technologies provide. Biogas can be delivered baseload or stored and delivered at the time of day when the state needs the energy. The current product categories do not take into account this storing capacity. “Peaking as Available” reflects the intermittent and non-controlled profile of solar, which produces energy when the sun shines. To encompass this unique storing benefit of many biogas projects, Parties encourage the CPUC to extend the baseload category to “baseload and storable.” Public Utilities Code § 399.20 does not limit the Commission to the three categories recommended in the Staff Proposal. It states: “The value of different electricity products including baseload, peaking, and as-available electricity.” There is nothing in statute that prohibits the Commission from including additional categories.

Numerous parties in addition to us have briefed and commented extensively on the requirements under § 399.20 for the FiT price to include the adders dictated in statute. We understand the Commission is looking for data to use as a basis for the “market price” it sets for

⁵ *Sustainable Conservation And Green Power Institute Comments To Section 399.20 Ruling*, July 21, 2011, in R.11-05-005, pp. 3-4.

the FiT, prior to calculating the adders dictated in statute. There are a number of options the Commission can pursue. Because conditions have not been sufficient in California to foster biogas participation in current programs, there is not a wide data set from which to draw. We reiterate from our July comments that there are two published reports on biogas prices. We refer the Commission again to these two reports.

First is the October 2009 CEC study, *Economic Study of Bioenergy Production from Digesters at California Dairies*,⁶ which examined the experience of the ten Dairy Power Production Program (“DPPP”) funded digester projects. The Study includes a detailed methodology and assessment of price of electricity needed to make these projects economically viable. In section 4.4, the study analyzed the price needed by each project to deliver a 17% internal rate of return (“IRR”) and an investment to meet Water Board requirements (in a double-lined lagoon). It also removed grant dollars the projects may have received. In 2007 dollars, the average price needed was approximately 30 cents per kWh. In addition the price reported in the study excludes the cost in most cases of compliance with Air District’s NOx requirements for the Central Valley.

More recently, a May 2011 study by the State Water Board, titled *Economic Feasibility of Dairy Manure Digesters and Co-Digestion Facilities in the Central Valley of California*,⁷ reaches a similar conclusion: a price to 28 cents is required for manure-only digesters.

Another option that could serve as a proxy for biogas is the cost of “green gas” contracts utilities have signed with biogas producers. Finally, in the July 21, 2011 comments in this docket, parties provided suggestions on how to determine a price for biogas. The Agricultural

⁶ Cheremisinoff, Nicholas, Kathryn George, and Joseph Cohen. 2009. *Economic Study of Bioenergy Production From Digesters at California Dairies*. California Energy Commission, PIER Program. CEC-500-2009-058.

⁷ California Regional Water Quality Control Board, Central Valley Region, *Economic Feasibility Of Dairy Manure Digester And Co-Digester Facilities In The Central Valley Of California*, May 2011.

Energy Consumers Association (“AECA”) provided a proposal for setting a base market price by using a rolling average of utility procurement costs from small renewable generators over the last three years.⁸ Unfortunately, as discussed above, very few of those contracts have been signed with biogas generators, so the cost basis for the comparison is not ideal. Fuel Cell Energy and the California Solar Energy Industries Association also have put forward suggestions for calculating base market prices for different technologies.

III. REVAMPING INTERCONNECTION WILL BE CRITICAL TO THE SUCCESS OF ANY FIT

The Staff Proposal recognizes the ongoing work in R.11-09-019 to establish Rule 21 as the interconnection standard for projects participating in the FiT. The Staff Proposal would require all generators interconnect under Rule 21 once the revised procedures are in place. This is a result for which Sustainable Conservation has long advocated. We encourage the Commission to expeditiously complete its work related to Rule 21.

IV. RESPONSES TO QUESTIONS POSED IN THE STAFF PROPOSAL

RAM Pricing

1. How should the CPUC set the price if an IOU does not execute any contracts in one or more product categories? For example, the IOU could use the price from another one of its product categories.

As discussed above, the Commission should use cost-based pricing regardless of the outcome of the RAM process. The current FiT pricing, based on the Market Price Referent and lacking an accounting of the specific factors detailed in § 399.20, has been inadequate to stimulate investments in biogas, even though there is tremendous environmental benefit from this technology.

⁸ AECA Comments, July 21, 2011, pp. 6-7.

An additional issue of which the Commission should be cognizant is the overarching autonomy given to the utilities as they conduct this solicitation to determine the amount of capacity that they will accept in each FiT product category. In the Staff Proposal, the staff recommends: “the IOUs should determine how much of each product category to contract with based on the product’s value to the utility and the utility’s need.” It is possible (and potentially likely) that the utilities would choose to fill the program with solar projects, eliminating the opportunity to nurture important alternative technologies such as biogas.

The product’s “value to the utility” would reflect current market conditions and the strategies and objectives appropriately defined by each utility. However, these objectives can be distinct from achieving policy goals for the state. Biogas, in its various forms, is an important potential resource of California-generated electric power, supplementing and complementing solar and wind. It is the role of the CPUC to define and achieve policy objectives, which would be met here by setting MW volumes by product category. Without the CPUC setting MW levels per product category, the effect would be a FiT that does not allow all resource types to participate, a violation of the recommended Principles for the FiT program.

2. How should the CPUC adjust the transmission part of the total RAM price if the generator only has a Phase I or System Impact Study, since the results of these studies are usually an overestimate of actual transmission costs?

This is another reason why the RAM is not an appropriate benchmark for the FiT. Because these projects are interconnecting at the distribution level, there should not be any transmission costs incurred.

Pricing Adders

3. If the CPUC adopts the locational adder, what should the CPUC do to increase the probability that a distribution system upgrade will be deferred?

The Staff Proposal overlooks a key fact about biogas digesters located on dairies: they cannot be moved. Farms are situated where they are situated. They do not have the flexibility to move their operation to find a better spot on the utility's distribution system. This fixed location can be a benefit; under current policies, those few dairies that have installed biogas digesters have paid for any distribution system upgrades that were required. The only reliability concern on the part of the utility should be the generation resource's effect on the distribution circuit

Given that farms cannot be moved, digester projects should receive priority at the interconnection point, relative to other forms of (renewable) energy. This will ensure two objectives: (1) that this important power source is developed, unlocking its unique scheduling benefits; and (2) that this important source of carbon offsets is developed. Livestock methane is one of only four approved Climate Action Reserve protocols. Based on AB 32, eight percent of a regulated entity's reductions can be met by offsets. However, it is estimated that there will be a shortage of offsets, particularly high-quality, in-state generated offsets like dairy methane. The development of initial projects, through the FIT and a pre-commercialization adder, and resolving interconnection issues, will enable the development of biogas digesters as a source of carbon credits.

Besides a locational adder, staff is not proposing other adders to the FIT price. If parties believe the Commission should consider other adders, then parties should address the following issues when suggesting an adder:

The Commission accepted briefs on SB 32 implementation in March of this year. At that time, Sustainable Conservation and other parties highlighted for the Commission the requirements in SB 32 to consider numerous additional factors:

399.20(d)(1) The payment shall be the market price determined by the commission pursuant to Section 399.15 and shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated

with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located.

(2) The commission may adjust the payment rate to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis. (emphasis added)

SB 32 also states the Legislature’s intent to prioritize renewable generation that: “Is strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers.”⁹ The Commission cannot now decide that these factors, which the Legislature deemed significant enough to merit being called out in SB 32, are immaterial.

In addition to fulfilling its legislative mandate, the Commission also should include in the FiT price an “Emerging Technology” Adder. The California biogas industry, in particular dairy biogas, is still in its infancy. As a result of the early stage of development, costs are higher. The Emerging Technology adder would supplement costs for an initial period, to enable the industry to mature. Once it does, the biogas industry will be able to develop projects at costs competitive with other renewable sources, while reflecting biogas’s unique benefits.

4. Does the technology have an incremental avoided cost compared to a RAM project in the same product category? If so, explain why.

As stated elsewhere, the RAM is not an appropriate metric to use in developing the FiT.

5. Is the adder avoiding a ratepayer cost? In staff’s view, any additional FIT adder should avoid a ratepayer cost and not a more general societal cost since the statute requires that ratepayers be held indifferent to the FIT payments.

Parties do not offer an opinion on this question at this time.

6. Can the adder be quantified? If so, suggest a method and the data sources for quantifying adder. Reference previous filings if applicable.

Parties do not offer an opinion beyond responses already provided at this time.

⁹ § 399.20(b)(3).

Pricing Trigger:

7. Identify the strengths and weaknesses for each party's proposal listed in the staff proposal, and make a recommendation addressing the following issues:

- a. Level of subscription that triggers price decrease
- b. Amount that the price should be decreased
- c. Time period without any or minimal subscription that the price should be increased
- d. Definition of minimal subscription

Parties do not offer an opinion on this question at this time.

FIT Contract

8. Do parties agree or disagree with the Agricultural Energy California Association's proposed modifications to PG&E's contract?

Parties agree with AECA.

9. If you seek additional modifications to PG&E's contract or any other contract filed in the record, identify the term, proposed change, and rationale in a matrix format. To ensure your recommendation receives full consideration, provide documentation or attestation to support your rationale. In addition, if you propose a modification, you should state if the language is from a previously approved contract and provide the citation. When reviewing contract language, staff considers the following guiding principles to determine if a change is warranted:

- a. Term properly allocates risk between buyer, seller, and the regulator
- b. Term minimizes transaction costs between buyer and seller
- c. Term is financeable and provides regulatory certainty

The Staff Proposal would adopt 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. This is contrary to the Commission's policy for development deposits established in D.10-12-048, which provides for the lower deposit for projects under 5 MW. The Commission should not create additional hurdles and barriers for small distributed generators.

The Staff Proposal appropriately continues the excess sales option established in the first FiT decision, D.07-07-027. The Commission must retain this feature of the contract, which is critical for customers with access to renewable fuel stocks that exceed their onsite electricity demands.

We note there are other aspects of the Staff Proposal that affect the likelihood a potential customer with generation capability will participate in the FiT, including Performance Standards, Telemetry, modifications to PG&E's contract (which is proposed as the basis for this effort), etc. We do not at this time have specific comments on those elements beyond those submitted by AECA, which we endorsed in an earlier round of comments.

Resource Adequacy

10. How should the CPUC implement PU Code § 399.20 (i), which states: “The physical generating capacity of an electric generation facility shall count toward the electrical corporation’s resource adequacy requirement for purposes of Section 380?”

Parties do not offer an opinion on this question at this time.

11. Should this issue be addressed in other planning proceedings, such as the LTPP and RA proceedings? To what extent is there overlap with the Distribution Interconnection Settlement process? What is an appropriate interim approach. If you support addressing this issue in other, more appropriate proceedings, provide a rationale and an interim proposal to address this language before it is addressed elsewhere.

The Commission should address all issues related to the FiT in this docket. Parties are participating here with specific interest in the FiT, a contract vehicle for customers who have the ability to install distributed generation. These parties do not have the resources to monitor numerous CPUC proceedings.

Implementing Strategically Located:

12. How should “strategically located” be defined and implemented?

“Strategically located” must be an inclusive term that accommodates the resources that provide capacity at peak demand on a distribution circuit, as described in response to Question 3. We note that biogas facilities provide VAR and Voltage support to parts of the grid that need these services, regardless of the location of local demand centers.

13. Comment on the strengths and weaknesses of each option listed in the staff proposal. If you have an alternative proposal, explain the rationale and the data sources required to implement it.

Parties do not offer an opinion on this question at this time.

CSI/SGIP/NEM Refund Options

14. Over what time period should incentives be refunded? What is the rationale for your time period versus the alternatives presented in the record?

Incentives should only be required to be refunded if they were provided in the last five years. Any project for which an incentive was provided more than five years ago and the project has remained in product has provided sufficient benefit to the ratepayers.

15. Which incentives should be refunded and why?

See response to above question.

16. At what interest rate should incentives be refunded and why?

Parties do not offer an opinion on this question at this time.

V. CONCLUSION

If the Commission is serious about installing 12,000 MW of distributed generation as part of the Renewable Portfolio Standard, and recognizes the value of diverse renewable technologies as part of the distributed generation portfolio, then the Commission will adopt a cost-based Feed-in Tariff specific to different technology types. The Commission must continue to work quickly to resolve ongoing problems with interconnection. Biogas can play an important role in expanding the amount of in-state renewable generation, with concurrent great benefit to California's climate goals.

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Respectfully submitted,



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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 November 2, 2011, at Oakland, California.



Jody London
FOR Sustainable Conservation