

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to
Continue Implementation and
Administration of California Renewables
Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

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

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TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Commission Must Affirm A Goal Of Diversity In California’s Renewable Energy Portfolio.....	1
III.	The Commission Has Range Of Recommendations To Use in Setting FiT Prices.....	2
IV.	The Commission Should Consider Separate Program for Biogas and Small Biomass.....	3
V.	The Commission Can Find a Better Process to Develop the Feed-in Tariff	5
VI.	Opportunity for Recourse is Still Lacking.....	5
VII.	Conclusion.....	6

I. Introduction

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) Sustainable Conservation and the Green Power Institute (“Parties”) submit these reply comments on the *Renewable FIT Staff Proposal – Revised Draft* (“Staff Proposal”). This proceeding continues to provide the Commission with an unprecedented opportunity to advance a statewide goal for greater distributed renewable generation in California.

The opening comments reveal a great deal of opposition to the approach recommended in the Staff Proposal. Even parties who agree with the basic premise of the Staff Proposal – to set a benchmark price for the feed-in tariff using results from the newly-instituted Renewable Auction Mechanism (“RAM”) – recommend modifications that would further complicate an ill-advised proposal that is inconsistent with the authorizing legislation, Senate Bill 32. The opening comments show that a great number of parties agree with Sustainable Conservation and the Green Power Institute that the Commission never intended for the feed-in tariff (“FiT”) to have any connection to an auction.

The Commission should abandon the Staff Proposal, and instead start over with a new process that establishes a technology-specific FiT that is in keeping with the intent of SB 32. There is likely more than one mechanism available for establishing a market-based avoided cost, if the Commission steps back and pursues a thoughtful assessment.

II. The Commission Must Affirm A Goal Of Diversity In California’s Renewable Energy Portfolio

The November 2 opening comments and comments filed earlier in this proceeding show great support for diversity in California’s renewable resource portfolio, particularly at the distributed generation level. Parties that advocate for specific technologies, including

Sustainable Conservation and the Green Power Institute, support other technologies also being part of the solution to California’s energy, environment, and climate change challenges. The Commission must state clearly its goal for a diversified renewable resource portfolio of all project sizes, from under 1 MW to significantly larger. The goal that comes closest to this in the Staff Proposal – “Ensure all RPS-eligible resources are able to participate” – should be re-stated as an unequivocal endorsement of diverse renewable resources.

Sustainable Conservation, the Green Power Institute, and other parties have provided ample evidence on the value of a diverse renewable energy portfolio throughout this and predecessor proceedings. A large number of projects will be required to meet the Governor’s goal of 12,000 MW of distributed generation by 2020. This will not be possible if we rely on any one technology. The Commission should acknowledge this as an important goal, and actively promote policies that will bring more distributed generation resources to California.

III. The Commission Has Range Of Recommendations To Use in Setting FiT Prices

Sustainable Conservation is primarily interested in establishing a viable feed-in tariff for farm-scale biogas projects. The Green Power Institute is also interested in establishing a viable feed-in tariff for small-scale solid-fuel biomass projects of the kind endorsed by the Placer County Air Pollution Control District in its Opening Comments. We clarify our position in opening comments: we agree with those parties who maintain the Commission should set prices for specific technologies based on avoided costs or a comparable pricing mechanism. We believe the CPUC can achieve ratepayer indifference and maintain consistency with recent FERC determinations related to the avoided cost determinations for renewable electricity.

The opening comments provide the Commission with a number of options for setting a biomass price that would qualify as an avoided cost under the Public Utilities Regulatory Policy Act (“PURPA”). Fuel Cell Energy correctly argues that the correct approach is to use “...the

prices that the IOUs are paying *for comparable renewable resources*,” and that the appropriate market segment for comparison purposes is renewable distributed generation under 3 MW.¹ The Center for Energy Efficiency and Renewable Technologies (“CEERT”) makes a strong case for pricing that is differentiated by technology, which uses avoided cost that “reflects their individual environmental, locational, and supply characteristics.”² AgPower also proposes a market-based avoided cost pricing methodology. AgPower identifies that the Commission has available to it a market indicator for biogas, in the form of utility biomethane purchases, which have already been approved by the Commission and have been contractually obligated by the utilities.

The Commission should not ignore the opposition from many fronts to using prices from the RAM. Even those who support the Staff Proposal would attach modifications to it, making it further complicated. Any claims that using the RAM prices for a benchmark will offer a simplified approach are wrong. The many different tweaks parties use to qualify their support for the Staff Proposal, if they support it, should concern the Commission that the staff proposal is not workable to foster a viable feed-in tariff. This is not a situation where the Commission should think that the diversity of opinion means the proposal is right; in this case, the opposition for so many different reasons to using RAM prices as a benchmark is a signal that the Commission needs a different methodology for setting FiT prices, one that is grounded in the authorizing legislation and reflects differences in cost structures of renewable DG technologies.

IV. The Commission Should Consider Separate Program for Biogas and Small Biomass

For two years, since SB 32 was signed, Parties have urged the Commission to move quickly to implement the law. For various reasons, this has not happened. As we look at the current landscape, Sustainable Conservation and the Green Power Institute are concerned that

¹ Fuel Cell Energy, Opening Comments, November 2, 2011, pp. 5-7.

² CEERT, Opening Comments, November 2, 2011, p. 13.

small, on-farm and off-farm biomass/biogas technologies (“biomass/biogas”) are being edged out of the opportunities this program initially presented, for a number of reasons.

First, as other parties observed in their opening comments, the Staff Proposal in its haste to mimic the RAM provides too much discretion to the utilities in selecting projects. In the RAM, the utilities are soliciting very small quantities for the “baseload” category, because the Commission in D.10-12-048 allowed the utilities, rather than the Commission, to determine in which categories they will solicit bids.³ In November, 2, 2011 opening comments, some parties describe how other utility programs intended for diverse technologies are fully subscribed, often by only one technology.⁴ This does not augur well for including biomass/biogas, notwithstanding the many co-benefits these technologies provide (as has been detailed in earlier pleadings). This also is further evidence of why a clear policy statement on resource diversity is required.

Parties for months have urged the Commission to provide the same type of early market penetration support to biomass/biogas that other technologies, particularly solar, have enjoyed for many years. Ideally, the program directed by SB 32 would foster conditions that provide ample opportunities for farm-scale biogas projects. This idea first came forward in the July comments submitted in response to the initial rulemaking, where the proposal is to set aside 150 MW of the 750 MW authorized in SB 32 for biogas.⁵ Small-scale biomass has not received as much attention as biogas in this proceeding, but it has a huge potential if it can be brought into the commercial marketplace.

³ See, for example, SCE RAM web site, https://sceram.accionpower.com/_ram2011/faqs.asp. SCE is soliciting “a. Peaking, as available [e.g., solar] 55 MW AC: b. Non-peaking, as-available [e.g., wind] 5 MW AC: and c. Baseload resources [e.g., geothermal, biomass] 5 MW AC” and the minimum bid is 1 MW. PG&E’s web site also indicates minimum bids into the RAM are 1 MW. SDG&E in its RAM is soliciting 5 MW baseload, 10 MW peaking as-available, and 5 MW non-peaking as-available, http://sdge.com/sites/default/files/documents/2011%20RAM%20Solicitation_0.pdf.

⁴ AECA Opening Comments, November 2, 2011, p. 5; California Wastewater Climate Change Group, November 2, 2011, p. 5; Vote Solar Opening Comments, November 2, 2011, p. 3.

⁵ See, for example, July 21, 2011 comments of Agricultural Consumers Energy Alliance (p. 2), Sustainable Conservation and Green Power Institute (p. 12).

If the Commission for whatever reason is unwilling or unable to adopt policies that allow biomass/biogas to meaningfully participate, then it should create separate procurement mechanisms for them. Support for a specific solicitation for biomass/biogas comes from diverse parties including TURN⁶ and the Placer County Air Pollution Control District.⁷

V. The Commission Can Find a Better Process to Develop the Feed-in Tariff

A theme in the opening comments is the dissatisfaction among parties with the process used to develop the Staff Proposal. Even though Parties have been a vocal advocate for the Commission to move quickly to implement SB 32, we find ourselves now recommending that the Commission step back and try again to work with the parties. At the July 11, 2011 Prehearing Conference, ALJ Mattson described a potential process of workshops, with ALJ involvement, to review the key elements for all parties in a feed-in tariff.⁸ This is similar to the process followed in 2007 to develop the current feed-in tariff. Unfortunately, that has not occurred yet for the SB 32 tariff. The Commission must step back and work with parties to implement a true FiT, choosing from an array of avoided cost mechanisms. Parties deserve the opportunity to collaborate on how to actually fulfill the mandates of SB 32 in terms of the various adders and approaches available. The Commission must consider what will result in more DG, and a diverse renewable portfolio.

VI. Opportunity for Recourse is Still Lacking

In opening comments (July 21, 2011), the Farm Bureau spoke to the need in the SB 32 for dispute resolution at the CPUC.⁹ The staff proposal lacks this critical provision. The

⁶ *Reply Comments Of The Utility Reform Network On The Administrative Law Judge's Ruling Setting Forth Implementation Proposals For SB 32 And SB2_1x Amendments To Section 399.20*, p. 3, August 26, 2011, in R.11-05-005.

⁷ Placer County APCD Opening Comments, November 2, 2011, p. 1.

⁸ Reporter's Transcript, July 11, 2011, R.11-05-005, pp. 81-83.

⁹ *California Farm Bureau Federation Comments To Sec. 399.20 Ruling*, p. 7, June 27, 2011.

Commission should ensure that any disputes under this program between utilities and potential program participants can be resolved under the Commission's jurisdiction in a timely manner.

VII. Conclusion

The Commission has before it a tremendous opportunity to advance California's goals for small renewable energy. This opportunity will best be realized by adopting a technology-specific price Feed-in Tariff, using market-based avoided costs. The RAM auction results are, for a host of reasons outlined in opening comments, completely inappropriate. The Commission must re-invigorate and re-direct its work to implement SB 32, using a collaborative process that results in fair prices for distributed generators and ratepayers, and allows California to realize the many benefits of more renewable distributed generation.

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Respectfully submitted,



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For SUSTAINABLE CONSERVATION

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 14, 2011, at Oakland, California.



Jody London
FOR Sustainable Conservation