

1/10/2012 L. Jan Reid

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)

RESPONSE OF L. JAN REID TO THE MOTION OF THE JOINT PARTIES

January 10, 2012

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I. Introduction

Pursuant to the December 21, 2011, email of Administrative Law Judge (ALJ) Regina DeAngelis, L. Jan Reid (Reid) submits this response to the motion (Motion) of the Joint Parties (JP) in Rulemaking 11-05-005 concerning the Feed in Tariff (FIT) pricing methodology in the Renewables Portfolio Standard (RPS) program. Responses are due on Tuesday, January 10, 2012. I will send this pleading to the Docket Office using the Commission's electronic filing system on January 10, 2012, intending that it be timely filed.

The Motion requests "a ruling directing the consideration of an administratively determined avoided cost pricing methodology for use in the Renewable Portfolio Standard ("RPS") Program Feed in Tariff ("FIT") at a Workshop to be scheduled during January 2012 that would be part of the record for the Commission's decision on the Renewable FIT." (Motion, p. 1)

The motion should be rejected by the Commission for the reasons given below.

II. Summary and Recommendations

I have relied on state law and past Commission decisions in developing recommendations concerning the JP's motion. I recommend the following:¹

1. The Commission should reject the JP's motion. (pp. 1-4)
2. If the Commission schedules workshops on FIT pricing proposals, all parties should be given the opportunity to present FIT pricing proposals. (p. 2)

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

3. The Commission should either order the JP to refile its motion and to remove both Appendix A and any references to Appendix A; or allow all other parties to file an amended FIT pricing proposal. (p. 3)
4. The Commission should find that using the Renewable Auction Mechanism (RAM) or considering the FIT to be a subset of the RAM is consistent with existing state law. (pp. 3-4)

III. Proposed Findings

My recommendations are based on the following proposed findings:

1. The only way that a workshop can be part of the record of a proceeding is for the Commission to schedule a formal workshop with a court reporter present and a transcript taken. (pp. 2-2)
2. The JP's claim regarding inconsistency with statute is based on statutory language that no longer exists. (pp. 3-4)

IV. Overview of JP Motion

The JP's Motion asks the Commission to schedule a Commission workshop in order to discuss a pricing proposal favored by the Joint Parties. The Motion has no other legitimate purpose. The Motion does not explain why such a workshop is necessary or why the workshop should be limited to the discussion of administratively determined pricing proposals. If the Commission schedules workshops on FIT pricing proposals, I recommend that all parties, not just JP members, be given the opportunity to present their own FIT pricing proposals.

The JP also "move for that Workshop to be included in the record on which the Commission will base its decision implementing the Sec. 399.20 FIT." (Motion, p. 7) The only way that a workshop can be part of the record of a proceeding is for the Commission to schedule a formal workshop with a court reporter present and a transcript taken. A formal workshop will result in additional costs that will be paid for by ratepayers.

The rest of the JP's motion is an improper use of Rule 11.1 of the Commission's Rules of Practice and Procedure. On pages 3-4, the JP recites positions that its members have taken in previously filed comments. More importantly, the JP states that: (Motion, p. 4, footnote omitted)

While each of the Joint Parties opposed the use of the RAM in favor of an administratively determined pricing methodology, AgPower in its Opening and Reply Comments went further and specifically proposed a 'technology-specific avoided cost-based pricing methodology for biogas-fueled FIT projects.' Since filing these Opening and Reply Comments, AgPower has worked toward revising its proposed methodology to be more broadly applicable to other technologies. That proposal, as revised and reformatted is attached hereto as Appendix A and discussed further in Section II below.

Since a motion is part of the record in a proceeding, the JP has effectively used Rule 11.1 to allow one of its members (AgPower) to modify its previously filed proposal. No other party in this rulemaking has been given the opportunity to modify its FIT pricing proposal. Unless corrected by the Commission, this portion of the JP motion will lead to a due process violation.

Therefore, I recommend that the Commission either order the JP to refile its motion and remove both Appendix A and any reference to Appendix A; or to allow all other parties to file an amended FIT pricing proposal.

V. Consistency with Statute

The JP incorrectly claims that "using the RAM or considering the Sec.399.20 FIT to be a 'subset' of the RAM" (Motion, p. 3) is inconsistent with existing statute.

The JP argues that: (Motion, p. 3, footnote omitted)

Section 399.20 indicates an express statutory intent to create a pricing mechanism different than an auction for 'small projects of less than three megawatts that are otherwise eligible renewable energy resources' because of the 'difficulties' faced by this sized resource 'in participating in competitive solicitations under the renewables portfolio standard program.'

When Public Utilities Code Section 399.20 was amended by Senate Bill 2 (1X), the language quoted by the JP was deleted. Therefore, the Commission should ignore the JP's claim regarding inconsistency with statute because the JP's argument is based on statutory language that no longer exists.

VI. Conclusion

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

* * *

Dated January 10, 2012, 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 January 10, 2012, at Santa Cruz, California.

/s/

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