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March 5, 2012

Lauren Rohde
Pacific Gas & Electric Company
77 Beale Street, MC B9A
San Francisco, CA 94105

Dear Ms. Rohde:

As directed in the January 10, 2012 Assigned Commissioner's and Administrative Law Judge's Ruling from the California Public Utilities Commission ("Commission"), Sustainable Conservation, the Agricultural Energy Consumers Association, and AgPower ("Biogas Parties") provide to the investor-owned utilities ("utilities") these suggested modifications to the proposed feed-in tariffs developed by the utilities. The matrix below describes the specific recommended changes.

The Biogas Parties have had opportunity to review at a high level the modifications recommended by Henwood Associates ("Henwood"). Those modifications address operational issues that impact the ability of generators under 1 MW to take advantage of the feed-in tariff. The Biogas Parties generally concur with the recommendations from Henwood, and share their concerns that the feed-in tariff is being driven toward contract terms and conditions that are designed for significantly larger projects, as has been documented elsewhere by the Biogas Parties and others in this proceeding. It should not escape notice by the utilities and the Commission that developers who have previously not been engaged in this proceeding are now coming forward, as the actual contract begins to take shape, and are expressing similar concerns as the Biogas Parties.

Finally, the Biogas Parties again encourage the utilities and the Commission to develop a simpler, more streamlined tariff than the one under consideration. The feedback from those with the ability to install distributed generation, both customers and developers, is the current proposed tariff is not one that will encourage new projects. The Commission's record on the feed-in tariff is quite voluminous, and dates back several years. The Biogas Parties note that on February 4, 2009, the Independent Energy Producers recommended to the Commission a six page feed-in tariff based on that in use in Germany. We append those comments herein, as an example of what a more customer-focused tariff would look like.

REVIEW OF PROPOSED CHANGES

IOU Proposed PPA Section numbers and names	Biogas Parties' Comment re proposed modification or omission	Recommendation
2.7 Expected Commercial Operation Date;	Proposed new language is acceptable with modifications. The word "guaranteed" and "time	Eliminate the word "Guaranteed" – adds unnecessary ambiguity

IOU Proposed PPA Section numbers and names	Biogas Parties' Comment re proposed modification or omission	Recommendation
Guaranteed Commercial Operation Date	<p>is of the essence” are not necessary. Insofar as both have specific meanings under statutory and common law, inclusion in this agreement may lead to confusion and litigation.</p> <p>We only agree to limiting extensions for “Transmission Delay” (or more accurately, “Interconnection Delay”) IF Rule 21 reform is implemented concurrently with SB 32. Otherwise, the contract should allow extension beyond 6 months for Interconnection Delay outside control of the Seller.</p>	10.1: eliminate first sentence agreement that “time is of the essence” – unnecessary and likely to lead to disputes.
2.8.1 Notice of Permitted Extension	The proposed requirement of notice of permitting or interconnection delay by six months after the execution date is not realistic. The need for an extension will probably not be apparent a full year ahead of time.	Replace “the date that is six (6) months after the date the Execution Date” with: <u>as soon as practicable or in any event no later than 30 days prior to the forecasted Commercial Operations Date, ...</u>
3.9 No Additional Incentives	Existing section 2.7 is not consistent with PU Code § 399.20(k)	No Additional Incentives. Any Seller that received ratepayer-funded incentives Seller agrees that during the Term of this Agreement, Seller shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in California Public Utilities Commission (“CPUC”) Decision (“D”) 01-03-073 (SGIP), or the California Solar Initiative, as defined in CPUC D.06-01-024 (CSI), or PG&E’s net energy metering tariff, prior to January 1, 2010, shall be eligible for this contract. or other similar California ratepayer subsidized program relating to energy production with respect to the facility.
4.4.1 Resource Adequacy – Deliverability	Deliverability status is determined by the CAISO, not the Seller. Contract should reflect Seller’s	Seller shall <u>have applied for the Interconnection Study for Seller to obtain Full Capacity Deliverability</u>



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Status	best efforts to obtain deliverability status.	<u>Status and seek to obtain Full Capacity Deliverability Status prior to the Commercial Operation Date.</u>
4.6 Eligible Intermittent Resource Protocol (“EIRP”)	Utilities have eliminated reference to EIRP due to proposal to limit PPA to 1 MW or less. If the “two PPA” approach is rejected, EIRP may remain in the PPA. However, this section should be modified to make it clear that EIRP only applies to wind and solar resources.	If Sectio4.6 is retained, add clarification that only EIRP-eligible intermittent resources are subject to this requirement.
5.3.1 Representation and Warranty	Existing section 5.3.1(a) is not consistent with section 399.20. Replace existing subsection (a) in its entirety with language that reflects PU Code § 399.20(k)(2)	<u>If the Facility previously received payments pursuant to Public Utilities Code § 379.6 or Public Resources Code § 25782, the Facility has either (a) reimbursed such funds or (b) received a waiver of reimbursement from the CPUC under Public Utilities Code § 399.20(k)(2) and in accordance with any applicable CPUC requirements.</u>
6.1 CAISO Agreements	Proposed new language requiring a CAISO Participating Generator Agreement or demonstration that it is “ineligible” under the CAISO tariff to receive a PGA is not required under SB 32.	Eliminate modification proposed by the utilities.
6.2.2 Meter Check	Meter check costs should be borne by the Buyer.	<u>The Buyer</u> Each Party shall bear its own costs and the Seller’s costs for any meter check or recertification.
6.8.2 Seller Curtailment	If the Buyer curtails it should still pay for the otherwise expected energy delivery. Here the Buyer does not have to pay – and the Seller still bears the CAISO penalties.	Buyer shall have no obligation to pay Seller for any Product delivered in violation of Section 6.8 or <u>but shall pay</u> for any Product that Seller would have been able to deliver but for the fact of a curtailment pursuant to Section 6.8.1(a), (b) or (c).
11.4 Force Majeure	The potential Force Majeure for dairy biogas is herd disease (e.g., hoof and mouth). It would likely take well over a year to slaughter and replace the herd. Thus extend Force Majeure to 2 years	... Agreement and which (a) extends for more than 365 consecutive days <u>(730 days in the case of dairy biogas projects)</u> , (b) extends for more than a total of 365 days in any consecutive 540-day period <u>(or a total of 730 days</u>



IOU Proposed PPA Section numbers and names	Biogas Parties' Comment re proposed modification or omission	Recommendation
	for dairy biogas projects. (This could prove important to financial parties.)	<u>in the case of dairy biogas projects),...</u>
12. Guaranteed Energy Production	This is a new concept in this agreement. Ideally it should be removed. If not, then the GEP should be 140% for dairy biogas. These are (a) biological processes and inherently harder to predict; (2) the California industry is in its infancy and there is little data on project electricity generation (unlike decades for solar and wind – and the development of EIRP) and (3) 140% is the RAM standard. There also should be (a) a 90% delivery in the subsequent year cure provision, which is a common practice and (b) substantial reduction in the penalties in Appendix G.	<p>12.1 where (x) is <i>[one hundred forty percent (140%) for wind as-available technology and dairy biogas baseload technology][one hundred seventy percent (170%) for all other as-available technologies][one hundred eighty percent (180%) for other baseload]</i> of the average of the Contract Quantity over the Performance Measurement Period</p> <p>12.2 Seller may cure the GEP Failure by delivering to Buyer no less than ninety percent (90%) of the Contract Quantity over the next following Contract Year (“GEP” Cure”). If Seller has a GEP Failure, then within ninety (90) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure. Seller shall cure the GEP Failure by delivering to Buyer GEP Damages, calculated pursuant to Appendix G, within thirty (30) days of receipt of the Notice.</p>
13.3.2 Credit and Collateral	Collateral requirement should be \$20/kw up to 3 MW. There should not be an increase to \$50/kw above 1 MW.	...is only capable of delivering a portion of the Contract Capacity to the Delivery Point, Seller shall forfeit, and Buyer shall have the right to retain, a portion of the Collateral Requirement equal to the product of (a) twenty dollars (\$20.00), <u>if Contract Capacity is less than 1000 kW, or fifty dollars (\$50.00) if Contract Capacity is greater than or equal to 1000 kw, multiplied by...</u>



IOU Proposed PPA Section numbers and names	Biogas Parties' Comment re proposed modification or omission	Recommendation
Appendix A	New proposed definition of "Guaranteed Commercial Operation Date" is duplicative, unnecessary, and might cause confusion and litigation.	Eliminate proposed definition of "Guaranteed Commercial Operation Date" on page 4 of Appendix A.

The redline document will be sent concurrently with this letter. Feel free to contact me or the representatives from the Agricultural Energy Consumers Association and AgPower if you would like more information about our position.

Sincerely,



Jody London
Regulatory Consultant to Sustainable Conservation

cc: Stacey Sullivan, Sustainable Conservation
Service List in R.11-05-005



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APPENDIX A

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE TERMS AND CONDITIONS OF FEED-IN TARIFF FOR SMALL RENEWABLE GENERATORS R.08-08-009

The Independent Energy Producers Association (“IEP”) appreciates the opportunity to comment on the terms and conditions appropriate for a feed-in tariff for small generators of up to 20 MW. Unfortunately, IEP was unable in the short time provided for responses to poll its member companies or to develop a consensus position on the issues raised in the request for comments.

IEP can observe, however, that some of the proposed terms and conditions appear to be unduly complicated and inappropriate for a feed-in tariff designed for small renewable generators that, at the maximum proposed size of 20 MW, amount to about 0.04% of the peak demand in the control area of the California Independent System Operator (or for that matter, for any feed-in tariff). Strict deadlines for commencing operation and penalties for missing development deadlines seem unnecessary in light of the small size of these projects. Similarly, the pay-for-performance model of most feed-in tariffs makes it unnecessary to prescribe strict performance requirements (see attachment). IEP observes that some of the complication of the current proposals results from the presumed choice of a pricing structure linked to the Market Price Referent, which estimates the cost of a gas-fired unit and which differs conceptually from the market- or value-based pricing of successful feed-in tariffs.

In short, IEP’s quick reaction to the request for comments is that the proposals appear to overcomplicate what should be a simple transaction with simple requirements and to convert the concept of a simple tariff into a lengthy and detailed power purchase agreement. For consideration of the parties, IEP attaches the feed-in tariff for wind energy projects that has been used to great success in Germany. The entire agreement for the German program is four pages—shorter than the request for comments. While IEP understands that American contracts are typically much longer and more detailed, a feed-in tariff should be designed to reduce the administrative costs associated with power purchase agreements, and the goal of a feed-in tariff should be simplicity. IEP urges the parties and the Commission to consider this goal and the

German example as we consider the terms and conditions in the workshops and in subsequent steps in this process.

Dated: February 4, 2009

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP

By Brian T. Cragg

Attorneys for the Independent Energy
Producers Association

**(GERMAN FEED-IN TARIFF)
Contract¹**

**Pertaining to supplementary regulation of rights and obligations in
accordance with the EEG (Renewable Energy Sources Act)**

between

hereafter called "Facility Operator"

and

hereafter called "Grid Operator"

§ 1.

Object of the Contract

**(1) Facility Operator operates ___ wind energy generating plant(s) of
the type _____ (hereafter called "facility") in
_____. The electrical connection
capacity is _____ kilowatt.**

**(2) This contract regulates the purchase of and compensation for electricity Facility
Operator generates in its electrical production facility, in accordance with the Law Giving
Priority to Renewable Sources of Energy (Renewable Energy Sources Act, henceforth
called "EEG") of 21 July 2004, and feeds into Grid Operator's grid.**

2.

Purchase Obligation

**(1) Facility Operator has the right to feed all the electrical energy produced in its facility
into Grid Operator's grid.**

**(2) Facility Operator feeds the electrical energy produced in its facility and offered to Grid
Operator into the high- /medium-voltage power grid of Grid Operator.
_____ is to be regarded as the transfer site for the electrical
energy and as property boundary.**

**(3) Input shall be in the form of three-phase current with a voltage of about
_____ kilovolt and a frequency of about _____ hertz.**

¹ Original in German by the Bundesverband WindEnergie (German Wind Energy Association),
Herrenteichsstrasse 1, D-49074 Osnabrück, Germany, www.wind-energie.de.

§ 3.

Measurement and Metering Devices

- (1) Measurement and metering of the amount of electricity fed into Grid Operator's power grid shall be in accordance with §§ 5, 12 and 13 of the EEG. Metering point will be _____.
- (2) Metering devices will be supplied, installed and maintained by Facility Operator and must comply with weights and measures regulations.

§ 4.

Compensation

- (1) Grid Operator shall compensate Facility Operator for the energy fed by it into Grid Operator's grid with the minimum fee specified by the EEG in the version valid at the time.
- (2) Grid Operator shall pay Facility Operator the amount of compensation specified in Paragraph 1 plus the sales tax in effect at the time if Facility Operator, as a company, is liable to sales tax. Facility Operator is obligated to advise Grid Operator in the case that it is no longer liable to tax on sales.

§ 5.

Billing

- (1) Facility Operator shall read the meter. The billing period for compensation for input is one calendar month, with the exception that the first billing period will comprise the month of start-up of operation and the subsequent month.
- (2) Grid Operator shall within 10 days after receipt of invoice pay the compensation into Facility Operator's account, which is as follows:

Bank: ABA: Account Number:

§ 6.

Duration of Contract

- (1) This contract becomes effective upon signing by both parties and has a term of 20 calendar years plus the year of start-up. Expiration of the contract is therefore 31 December 20...
- (2) Facility Operator has the right to terminate the contract with a month's notice at the end of a calendar month. Both contract parties' right to extraordinary cancellation of the contract for an important reason is not hereby affected.

§ 7.

Legal Succession

Facility Operator has the right to transfer the rights and obligations contained in this contract to a legal successor. This also applies to individual wind energy generating facilities, provided there is guarantee that with respect to the individual wind energy generating facility the regulations of this contract will be adhered to, especially §§ 3 to 5 of this contract.

**§ 8
Liability**

- (1) For damages that Grid Operator may incur as a result of interruption of feed-in or irregularities in the feed-in, § 6 of the Regulation on General Conditions for Electricity Supply to Standard Customers (AVBEItV) will apply, with the proviso that the terms “Customer” and “Standard Customer” refer to the “Grid Operator,” and the term “Electricity Supplier” refers to the “Facility Operator.”
- (2) Claims for damages according to (1) above shall be subject to a limitation period of one year from the time at which Grid Operator takes cognizance of the damage, of the circumstances that justify this claim, and of the liable Facility Operator, and without regard to such cognizance after a period of two years from the damaging event.

**§ 9
Concluding Provisions**

- (1) Changes and addenda to this contract require written form. No ancillary verbal agreements have been made.
- (2) Should any one clause of this contract be found to be void, contestable, or inoperative, the validity of the other clauses shall not be thereby affected. In the case of an invalid provision, the parties to this contract are obligated to agree upon a valid provision to put in its place, one that customarily matches as closely as possible the economic purpose of the invalid provision.
- (3) Where no specific provision has been made in this contract, the regulations of the EEG shall apply in the first place and, secondarily, the regulations of the BGB (German Civil Code).

_____, _____ [date] _____, _____ [date]

Facility Operator

Grid Operator