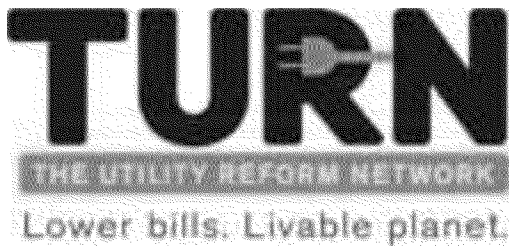


BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA

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

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

OPENING COMMENTS OF THE UTILITY REFORM NETWORK  
ON THE PROPOSED DECISION  
IMPLEMENTING SB 32 AND SBx2



Marcel Hawiger, Staff Attorney  
Matthew Freedman, Staff Attorney

**THE UTILITY REFORM NETWORK**

115 Sansome Street, Suite 900  
San Francisco, CA 94104

Phone: (415) 929-8876 ex. 311

Fax: (415) 929-1132

E-mail: [marcel@turn.org](mailto:marcel@turn.org)

April 9, 2012

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK**  
**ON THE PROPOSED DECISION**  
**IMPLEMENTING SB 32 AND SBx2**

Pursuant to Rule 14.3, the Utility Reform Network (“TURN”) submits these comments on the Proposed Decision of ALJ De Angelis,<sup>1</sup> mailed on March 20, 2012.

TURN Generally Supports the Proposed Decision

The Proposed Decision modifies the existing obligation of the investor-owned utilities to purchase any and all output from small wholesale renewable power generators, the so-called “feed-in tariff” (“FIT”). The proposed decision adopts various rules to implement a new feed-in tariff program now called the Renewable Market Adjusting Tariff (“Re-MAT”). The following are some of the primary elements of the Re-MAT in the proposed decision:

- Changes the starting fixed price from the former Market Price Referent to the weighted average of the highest prices from the utilities’ November

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<sup>1</sup> The PD is entitled “Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1X and Denying Petitions for Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc.”

2011 solicitations for renewable generation under the Renewable Auction Mechanism (“RAM”) program;

- Increases the eligible size limit from 1.5 MW to 3 MW;
- Modifies the RAM capacity size requirements to eliminate overlap with the Re-MAT and reduce the potential for gaming by developers;
- Adopts a mechanism for monthly increases or decreases in the Re-MAT price depending on market subscription activity;
- Adopts a mechanism for allocating program capacity among three different product categories;
- Adopts conforming changes to the cap on program participation;
- Adopts eligibility rules to ensure project viability;
- Adopts a prohibition against daisy-chaining multiple projects; and
- Prohibits any generator who received SGIP or CSI incentives from eligibility under the Re-MAT for at least ten years after receiving incentives; and
- Makes several other program design and eligibility modifications to promote optimal siting and interconnection.

TURN supports the PD and does not raise any arguments concerning legal or factual error. In our previous comments, we noted that the Commission has

consistently interpreted identical legislative language concerning a fixed price to indicate the use of the market price referent. The Commission has adopted a different and more expansive interpretation in this proposed decision.

TURN recommends three modifications to the Proposed Decision:

- The Commission should amend the queuing process to adopt a six month time limit for queue positions and prohibit transfer of queue positions among entities so as to prevent immediate clogging of the queue by participants who do not intend to accept near-term prices;
- The Commission should allow for the reallocation of capacity among product types prior to the expiration of 12 months; and
- The Commission should specify that projects that received SGIP or CSI rebates must be operational for ten years prior to being eligible for the Re-MAT price.

#### Modification to Queuing Process (Section 6.4)

TURN has concerns about the proposed queuing process. The PD directs utilities to award an interested generator a queue position on a “first come, first serve” basis. The generator need only submit a program participation request form to the utility and meet basic viability criteria. Once a queue position has been awarded, the IOU will offer the monthly price to generators in order of the queue and each generator may, in turn, choose to accept or reject the price. Under this

approach, a high queue position will carry significant value since it provides a right of first refusal for a limited quantity of contract capacity. The lack of any apparent penalty for obtaining a high queue position and rejecting monthly price offers means that all generators will want to immediately lock in a desirable position.

Once the program commences, TURN anticipates that generators will flood the utilities with immediate requests for queue positions to maximize their opportunities. The timing difference between initial requests could be a matter of seconds on the first day that the queue opens. Those with preferred queue positions may opt to decline early offers in the hopes that prices will rise over time, leaving the top queue positions with priority access to premium prices if offered in a future month. Some entities may seek to obtain and then monetize preferred queue positions by selling their spot in line to other competitors. This queue hogging/clogging behavior would drive up underlying costs and could prove detrimental to ratepayer interests.

The Commission should consider a maximum time limit on generators remaining in the queue to prevent market actors from permanently occupying an advantageous queue position. If a generator fails to accept 6 consecutive monthly prices, the project should be dismissed from the queue and forced to reapply. This limitation would reduce the likelihood that projects jam the queue process early and ensure that those in line are forced to seriously consider available pricing rather than waiting for a potentially lucrative option in the future. Moreover, the Commission

should make the queue position nontransferable to other entities. If the project is sold to a new set of owners, it should be required to submit a new queue application. This condition will prevent queue positions from becoming their own form of property rights.

#### Modification to Capacity Allocation Among Products

TURN also has concerns about allocating equal amounts of capacity to the three distinct product types (baseload, peaking as-available, non-peaking as-available). Based on responses to the recent RAM solicitations, there does not appear to be much supply of projects up to 3 MW in size offering a baseload or non-peaking as-available product. In the event that competition is limited, potential sellers could be incentivized to obtain queue positions, decline monthly adjustments in order to increase the price, and execute contracts just before the 12-month trigger would cause the utilities to reassign unused capacity to other product categories. The presence of at least 5 entities in the queue will not prevent this type of behavior, especially if multiple projects are owned by the same developer. The Commission should therefore reserve the right to entertain motions to reallocate capacity from these categories, or suspend the category entirely, prior to the end of 12 months.

#### Modification Concerning Refund of Incentives (Section 22)

TURN does recommend one specific modification to the PD. The PD adopts PG&E's proposal to make any generator who received SGIP or CIS incentives for a project ineligible under the Re-MAT until "it has been online for at least ten

years from the date it first received the incentive.”<sup>2</sup> TURN suggests that this section be clarified to state that the project “has been online and operational for at least ten years.” Projects should not be eligible if they were operational for five years (sufficient to collect all performance incentives) but then in-operational for another five years. The Commission should require minimum system output requirements.

TURN may comment on other aspects of the PD as necessary in response to comments from other parties.

Dated: April 9, 2012

Respectfully submitted,

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Marcel Hawiger  
Matthew Freedman  
Attorneys for

THE UTILITY REFORM NETWORK  
115 Sansome Street, Suite 900  
San Francisco, CA 94104  
Phone: 415-929-8876 x304  
Fax: 415-929-1132  
E-mail: [marcel@turn.org](mailto:marcel@turn.org)

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<sup>2</sup> PD, Sec. 24, p. 95.

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 April 9, 2012, at San Francisco, California.

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Marcel Hawiger  
Staff Attorney