

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)

**THE DIVISION OF RATEPAYER ADVOCATES' OPENING COMMENTS
ON THE PROPOSED 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.**

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I. INTRODUCTION

Pursuant to California Public Utilities Commission (Commission) Rules of Practice and Procedure 14.3, the Division of Ratepayer Advocates (DRA) respectfully submits the following opening comments on the Proposed Decision (PD) revising the Feed-in Tariff (FiT) program. DRA generally supports the PD and offers these opening comments to advocate for minor modifications and clarifications that will result in maximum value for ratepayers. DRA recommends the Commission adopt the PD with the following modifications:

1. Reduce the incremental monthly price adjustment from \$4/megawatt hour (MW/h) to \$2/MWh as proposed by Southern California Edison (SCE) in their opening comments on the SB 32 FiT Staff Proposal and supported by DRA¹;
2. Eliminate the requirement that the investor-owned utilities (IOUs) must wait 12 full months before reassigning any unsubscribed megawatts from one product category to another;
3. Modify Conclusion of Law 49 to clarify that California Solar Initiative (CSI) and Self-Generating Incentive Program (SGIP) customers are ineligible to apply for the FiT/Renewable Market Adjustment Tariff (Re-MAT) unless they have completed their ten-year service as a CSI or SGIP customer.

II. DISCUSSION

A. **The Commission should modify some components of the Re-MAT price adjustment mechanism to ensure ratepayer protections throughout the program**

In general DRA supports the PD and the Commission's proposed Re-MAT pricing structure for the FiT program. The PD sets forth many policies that, if implemented, could maximize value to ratepayers while ensuring a robust FiT program for small, renewable distributed generation (DG) projects in California. In particular, DRA commends the Commission for the election of a market based pricing methodology as

¹ See DRA Opening Comments on SB 32 Staff Proposal, pp. 9-11 (November 2, 2011); Reply Comments of DRA on SB 32 FiT Staff Proposal, pp. 10-12 (November 14, 2011).

opposed to an administratively determined price. A market based price best complies with the ratepayer indifference clause of 399.20(d)(3) and will more closely reflect the market price for smaller DG renewable projects. Other components of the PD and Re-MAT pricing structure that best balance the interests of ratepayers, the IOUs, and developers include:

- Setting the base tariff price at \$89.23/MWh, based on the weighted average of the IOUs' highest executed Renewable Auction Mechanism (RAM) contracts, and adjusting this base price by time of delivery (TOD);²
- Declining to adopt any additional price adders such as an environmental or locational adder;³
- Permitting the IOUs to reallocate megawatts from one product category that is undersubscribed to another product category that is attracting more market interest;⁴
- Allowing project developers the option to pursue full-deliverability or energy only FiT contracts with the IOUs;⁵
- Prohibiting generators with a nameplate capacity of three megawatts (MW) and under who meet other eligibility criteria for the FiT program from participating in the RAM program if the capacity for the relevant FiT product category has not yet been fully subscribed.⁶

Although the PD incorporates significant ratepayer protections, the Commission should modify some components of the Re-MAT to help prevent tariff prices from increasing unabated and limit ratepayer exposure to expensive contracts. DRA does not necessarily advocate for a program price cap but does suggest that some parameters be

² PD, p. 44.

³ PD, pp. 32-33, 38.

⁴ PD, p. 48.

⁵ PD, pp. 51-52.

⁶ PD, p. 60.

established to place an upper limit on the tariff price. The changes recommended by DRA, as detailed below, work within the existing parameters of the proposed program to establish additional ratepayer protections.

1. The monthly incremental price adjustment should be reduced from \$4/MWh to \$2/MWh

The PD establishes the Re-MAT monthly price adjustment mechanism as a necessary component of the FiT program. The monthly price adjustment mechanism works as follows. First, the Commission directs the IOUs to divide their total allocated FiT program capacity by 12 months. The IOUs are then required to assign one-third of the capacity to each product category (baseload, peaking as available, and non-peaking as available) to establish a monthly megawatt procurement target. In the first month, depending the amount of eligible projects in the queue and on each product category's monthly level of subscription, each product category's tariff price will adjust upward or downward by \$4/MWh, or stay the same. When there are five eligible projects in the queue for a particular product category, and the full monthly capacity is subscribed, then the tariff price will decline by \$4/MWh. If there are at least five eligible projects in a product category's queue but no program subscriptions, then the tariff price will increase by \$4/MWh until there is at least one program subscription. Finally, if there are not five eligible projects in a product category's queue, then the price will stay the same. The adjustment increases from \$4/MWh in the first month to \$8/MWh in the second month, \$12/MWh in the third month, and so on indefinitely.

DRA supports the basic premise of the Re-MAT price adjustment mechanism; namely, the fluctuation of price in each product category depending on market interest. However, DRA has concerns that the proposed monthly price adjustment of \$4/MWh is too high and could quickly result in unreasonably high prices in some product categories. To reduce ratepayer exposure to expensive contracts, DRA recommends that the Commission reduce the monthly incremental adjustment payment from \$4/MWh down to \$2/MWh. A \$2/MWh monthly adjustment payment is less volatile and more comparable with prices in current renewable programs. The \$2/MWh monthly adjustment payment

will also stimulate new interest over a longer period of time and ensure that tariff prices do not rise to unreasonable levels due to factors like permanent under-subscription (i.e., five eligible projects in queue for a given month, but no program subscription).

As demonstrated in the table in Appendix A (attached), after six months the tariff price of a particular product category that has at least five eligible projects in the queue but has received no subscriptions will only increase to \$119.23/MWh under a \$2/MWh incremental monthly payment, as compared to \$149.23/MWh under a \$4/MWh incremental monthly payment. Following this formula, after just eighth months of no subscriptions, the tariff price will be \$145.23/MWh under a \$2/MWh incremental monthly payment, as compared to \$201.23/MWh under the proposed \$4/MWh incremental monthly payment. At \$201.23/MWh, the FiT program tariff would be more than double the starting base price of \$89.23/MWh, would exceed Southern California Edison Company's (SCE) Solar Photovoltaic Program (SPVP) price cap of \$192.50/MWh, and would surpass even the highest locational adder tariff price of \$166.23 that was proposed by Energy Division staff at the September 2011 workshop. After just six months at a \$4/MWh incremental monthly payment, the tariff price in a product category could exceed the price cap for all existing renewable programs; clearly an unreasonable result for ratepayers.

2. The waiting time for IOUs to reassign MWs from one product category to another due to lack of subscriptions should be reduced

The PD proposes that the IOUs may reassign any unsubscribed megawatts from one product category to another after the expiration of a 12-month waiting period.⁷ Specifically, the PD states that any unused capacity from a product category that has received “minimal to no subscriptions” can be reallocated to the product category with the highest average net market value in order to “minimize ratepayer exposure to a large number of high priced contracts while ensuring that capacity is available for that product

⁷ PD, pp. 48-49.

type.”⁸ The IOUs may initially reassign 5% of the unsubscribed megawatts in month 13, 10% in month 14, 20% in month 15, and so on.

DRA asserts that a 12-month waiting period to reallocate megawatts from one product category to another is too long of a time period to allow the price to escalate or megawatts to sit unsubscribed in an underperforming product category. Accordingly, the waiting period should be reduced. As Appendix A demonstrates, if the price for a particular category were to increase unabated for 12-months due to lack of subscriptions, the final tariff price would be \$353.23/MWh under the PD’s proposed \$4/MWh incremental monthly price adjustment. \$353.23/MWh is nearly four times the PD’s proposed base contract price of \$89.23/MWh and is **not** cost-competitive nor in line with **any** party’s proposal for the FiT program or any other RPS program.

DRA notes that the three product categories are not equal with regards to market development. The IOUs’ first RAM auctions demonstrated that some product categories experienced robust participation while other product categories had insufficient participation that resulted in very few to no executed contracts. From the RAM auction results one can deduct that the absence of a well-developed market and diverse group of developers in some product categories may result in a low number of FiT subscriptions in these product categories. Alternatively, there may be just enough participants to meet the five eligible projects in the queue by five different developers threshold, but these developers may opt not to accept the tariff price resulting in a tariff price increase.

DRA supports the PD’s intent to prevent gaming via the establishment of a minimum requirement of five eligible projects in the queue by five different developers. However, in light of the above concerns, DRA recommends the creation of additional off-ramps that do not eliminate the five minimum eligible project requirement, yet will help to prevent prices from rising to unreasonable levels or megawatts from sitting idly in a product category. Accordingly, in order to effectively prevent unreasonable tariff

⁸ PD, p. 49.

prices, DRA recommends that the Commission abandon the 12-month waiting period and adopt a megawatt reallocation structure that is triggered by price, not time.

Specifically, the Commission should elect a price point that, once reached, gives the IOUs the discretion to transfer megawatts out of that product category and into another. Since the program is designed to maximize efficiency through rapid subscription to the tariff, the IOUs should have the option to quickly reassign megawatts to another product category if they observe that one product category is not experiencing sufficient participation. DRA suggests that the soft ceiling for megawatt reallocation should be set at \$180/MWh for each product category. The \$180/MWh soft ceiling would apply to any monthly price adjustment mechanism adopted by the Commission (i.e., \$4/MWh or \$2/MWh). Given that the PD assumes the base price of \$89.23/MWh will remain throughout the entirety of the program, DRA finds \$180/MWh to be reasonable soft cap as this price is double the base starting price of \$89.23/MWh. Since \$0/MWh is the implied floor of the Re-MAT, a \$180/MWh soft ceiling is reasonable.

DRA notes that, based on the results of the IOUs' first RAM solicitations and the limited turn out in particular product categories, the IOUs were permitted to reassign megawatts from one product category to another without having to first observe or wait for the results of subsequent RAM auctions. If the Commission envisions the FiT program to be a true market based program, it is inefficient to have unsubscribed megawatts locked into an underperforming product category for 12 months. Instead, the IOUs should be given the discretion to reallocate these megawatts once a soft ceiling cap of \$180/MWh has been reached. A 3 MW minimum balance in each product category should be retained as well as the Commission's proposed reallocation structure that starts at 5% of the remaining capacity and doubles each subsequent month.

B. The Commission should modify Conclusion of Law 49 to clarify aspects of the refund of incentives for CSI and SGIP customers

DRA commends the Commission for addressing the refund of incentives issue for customers of the California Solar Initiative (CSI) and Self Generation Incentive Program

(SGIP) who wish to participate in the Re-MAT program. The PD adopts the proposal set forth by Pacific Gas and Electric Company (PG&E) which deems CSI and SGIP customers to be ineligible for the §399.20 FiT Program for ten years from the date in which they first received incentives under their respective program. The PD also requires Net Energy Metering (NEM) customers to terminate their participation in NEM in order to qualify for the §399.20 FiT Program. However, the PD is unclear on one issue regarding the refund of incentives.

The PD does not clearly articulate whether CSI and SGIP customers are required to refund a portion of their incentives if they attempt to switch to Re-MAT before their ten year time limit with their respective program has completed. Specifically, the PD only states that a generator that previously received incentives under CSI or SGIP “can participate in the §399.20 FiT Program and will owe no refund if it has been online for at least ten years from the date it first received the incentive.”⁹ DRA supports PG&E’s recommendation to prohibit CSI and SGIP customers from participating in the FiT program until they have completed their ten year service with their respective program.

In order to clarify this issue, DRA recommends the Commission modify Conclusion of Law 49 to include an additional sentence, to read as follows:

49. To implement § 399.2(k) requiring refund of CSI and SGIP incentives, a generator that previously received incentives under CSI or SGIP can participate in the § 399.20 FiT Program and will owe no refund if it has been online for at least ten years from the date it first received the incentive. **CSI and SGIP customers are ineligible to apply for the FiT/Re-MAT tariff unless they have completed their ten-year service as a CSI or SGIP customer.** Net-energy metering customers can participate in the § 399.20 FiT Program but should first terminate participation in net-energy metering.

The above Conclusion of Law articulates the Commission’s intentions in establishing this policy and eliminates a loophole that may result in unnecessary ratepayer costs.

⁹ PD, p. 95.

III. CONCLUSION

DRA supports the PD, and recommends that the Commission adopt the PD with the following limited changes and clarifications:

1. Reduce the monthly incremental price adjustment from \$4/MWh to \$2/MWh;
2. Eliminate the requirement that the IOUs must wait 12 full months before reassigning any unsubscribed megawatts from one product category to another;
3. Modify Conclusion of Law 49 to clarify that CSI and SGIP customers are ineligible to apply for the FiT/Re-MAT tariff unless they have completed their ten-year service as a CSI or SGIP customer.

Respectfully submitted,

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April 9, 2012

VERIFICATION

I, Matt Miley, am counsel of record for the Division of Ratepayer Advocates in proceeding R.11-05-005, and am authorized to make this verification on the organization's behalf. I have read the **“THE DIVISION OF RATEPAYER ADVOCATES’ OPENING COMMENTS ON THE PROPOSED DECISION REVISING FEED-IN TARIFF PRORGRAM, 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.”** filed on April 9, 2012.

I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing are true and correct.

Executed on April 9, 2012 at San Francisco, California.

/s/ MATT MILEY
Matt Miley
Staff Counsel

APPENDIX A

Table of Re-MAT Pricing Structure at \$2/MWh and \$4/MWh

Monthly Incremental Adjustment Price at \$2/MWh

Month	Δ from Base Starting Price	Incremental Δ	Total Price (\$/MWh)
1	-	-	\$89.23
2	+/- \$2	\$2.00	\$91.23
3	+/- \$6	\$4.00	\$95.23
4	+/- \$12	\$6.00	\$101.23
5	+/- \$20	\$8.00	\$109.23
6	+/- \$30	\$10.00	\$119.23
7	+/- \$42	\$12.00	\$131.23
8	+/- \$56	\$14.00	\$145.23
9	+/- \$72	\$16.00	\$161.23
10	+/- \$90	\$18.00	\$179.23*
11	+/- \$110	\$20.00	\$199.23
12	+/- \$132	\$22.00	\$221.23
13	+/- \$156	\$24.00	\$245.23

*Under a \$2/MWh incremental monthly adjustment Re-MAT, at the end of month 10 with no subscriptions, the soft ceiling cap would be triggered and the IOUs may start to reallocate megawatts from an undersubscribed product category to another more robust product category.

(See next page.)

Monthly Incremental Adjustment Price at \$4/MWh

*Under a \$4/MWh incremental monthly adjustment Re-MAT, at the end of month 7 with no subscriptions, the soft ceiling cap would be triggered and the IOUs may start to reallocate megawatts from an undersubscribed product category to another more robust product category.

Month	Δ from Base Starting Price	Incremental Δ	Total Price (\$/MWh)
1	-	-	\$89.23
2	+/- \$4	\$4	\$93.23
3	+/- \$12	\$8	\$101.23
4	+/- \$24	\$12	\$113.23
5	+/- \$40	\$16	\$129.23
6	+/- \$60	\$20	\$149.23
7	+/- \$84	\$24	\$173.23*
8	+/- \$112	\$28	\$201.23
9	+/- \$144	\$32	\$233.23
10	+/- \$180	\$36	\$269.23
11	+/- \$220	\$40	\$309.23
12	+/- \$264	\$44	\$353.23
13	+/- \$312	\$48	\$401.23