

**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 THE COUNTY SANITATION DISTRICTS OF LOS
ANGELES COUNTY ON THE PROPOSED DECISION REVISING THE FEED-IN
TARIFF PROGRAM**

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The County Sanitation Districts of Los Angeles County (Sanitation Districts) respectfully submit the following reply comments in response to the proposed decision revising the feed-in tariff (FIT) program issued on March 20, 2012.

I. COMMENTS

In its opening comments, the Sanitation Districts discussed the unique factors involved in the development and construction of biogas energy projects, and how the PD's project timing should be modified to account for these factors to ensure the successful participation of biogas energy projects in the Feed-in-Tariff (FiT) program. The Sanitation Districts generally support the PD's Re-MAT pricing methodology. However, the Sanitation Districts' concerns with the proposed project timing are illustrated well in the opening comments of FuelCell Energy:

FCE is struck by the PD's confidence that market participants wishing to develop projects using "more expensive technologies" will be willing to invest up front the money and effort necessary to meet screening criteria simply in order to wait in a queue and hope that the FIT price will one day be adjusted to a point that makes project development a viable possibility. In FCE's experience, most DG project developers and lenders will not put up funds for interconnection studies and site leases on pure speculation.¹

¹ See Comments of FuelCell Energy, Inc (FCE) at 7.

FuelCell Energy correctly states that project developers will not invest time and money in developing a project until there is some certainty as to what the value of the project will be. This is especially true of public wastewater agencies that must have a reasonable measure of economic certainty to justify the use of public funds in the development of renewable energy projects. Therefore it is essential that the Re-MAT price adjustment mechanism establish a true market price in short order to provide price certainty for developers to begin investing in the development of new biogas projects, and to allow enough development time for these projects to enter into the queue before capacity reassignments begin to occur. However, many of the recommendations offered in the opening comments run counter to this need and would potentially exclude an entire class of projects from successful participation in the FiT program due only to the longer and more costly development process required for these projects.

A. The Monthly Price Adjustment Rate Should Not be Decreased without Providing More Time for Project Developers to Respond to the True Market Price Before Capacity Reassignments Begin

The three large Investor-Owned Utilities (IOUs) have proposed to decrease the monthly price adjustment mechanism rate² to “limit IOU and ratepayer exposure to out-of-market prices”³. While this proposal may serve to protect the IOUs, it would also slow the establishment of a true market price, potentially harming project developers who would have less time to develop projects before capacity reassignments begin to occur. To offset this effect, any decrease to the monthly price adjustment rate should be accompanied with an increase in the time before capacity reassignments occur.

B. The Waiting Period for Capacity Reassignment Should Not be Shortened

Some parties have proposed to shorten the waiting period before capacity reassignments begin to occur⁴. These proposals should be rejected on the basis that a shortened waiting period would harm project developers that need sufficient time to develop projects before entering them into the queue. Once a true market price is established a developer may be ready to move forward on developing a project.

² See Comments of San Diego Gas & Electric Company (SDG&E) at 8; Comments of Pacific Gas & Electric Company (PG&E) at 5; Comments of Southern California Edison Company (SCE) at 13.

³ See SDG&E Comments at 8.

⁴ See SDG&E at 9; Comments of the Division of Ratepayer Advocates (DRA) at 5; Comments of The Utility Reform Network at 5.

However, the developer will likely not be willing to invest in the development of a project if there is reasonable concern that the capacity of the project's product category will be reassigned before that project can be developed and entered into the queue.

C. Any Price Controls Should Not Inhibit Market Pricing

Some parties have proposed that a price cap be established to provide protection against market manipulation and gaming. However, a hard price cap is antithetical to the requirement of §399.20(d)(1) that the FiT be based on a market price. If the price is truly to be set by the market it should not be limited by an arbitrary price cap. Still, the Sanitation Districts appreciate the need to protect against market manipulation and gaming and recommend that any price controls adopted by the Commission should not be so low or so rigid as to prevent the establishment of a true market price.

PG&E proposed a price cap of \$133.85/MWh⁵. While this price would perhaps be sufficient to trigger project development among all product types, it is not high enough above the price starting point to give leeway for the market to function. SCE proposed a price cap of \$192.50 based on the price cap that has already been adopted by the Commission for SCE's Solar Photovoltaic Program⁶. This is a much more reasonable price that would allow sufficient flexibility for the market price to be established. DRA proposed that a "soft ceiling for megawatt reallocation should be set at \$180/MWh for each product category"⁷. This proposal is too rigid and could result in loss of a product category's capacity for no other reason than an arbitrary determination of what constitutes too high a market price.

The main issue here as identified in the PD is the need to "prevent gaming, minimize ratepayer exposure to excessively high contract prices, and efficiently manage unsubscribed capacity"⁸. What would constitute gaming and excessively high contract prices is only speculative at this stage. Therefore the Sanitation Districts recommend that if any price controls are adopted, they be utilized as a trigger for Commission review rather than a hard price cap or a "soft ceiling for megawatt reallocation".

⁵ See PG&E at 3.

⁶ See SCE Comments at 14.

⁷ See DRA Comments at 6.

⁸ Proposed Decision at 48.

D. Other Proposals would Provide Consumer Protection without Inhibiting Project Development and Widespread Participation

Various proposals by other parties would improve the FiT program by providing consumer protection while not inhibiting project development or excluding biogas projects from FiT participation due to their longer project development, design, construction and startup timeframes. The Sanitation Districts are in agreement with the following proposals:

- FuelCell Energy proposed to use the required program review to address any flaws in the program, then implement necessary program changes that are identified and allow those changes to work before the IOUs are allowed to reallocate capacity between product types⁹. This will help ensure that capacity reallocation does not occur due to problems with the program rather than a lack of viable projects.
- SDG&E proposed to extend the Online Date from 18 months to 24 months based on the draft RAM Resolution’s extending the time to achieve commercial operation to 24 months¹⁰. FiT biogas projects are likely more complex than larger solar RAM projects. If a need has been identified to extend the RAM commercial operation deadline to “improve the RAM program”, the same extension would also serve to improve the FiT program, in particular by allowing biogas projects sufficient time for design, construction and startup activities.
- PG&E’s proposed to increase the Online Date 6-month extension to 12-months to conform to the proposed Joint IOU PPA¹¹. This length of time is more consistent with the typical time needed to obtain an air quality permit from the South Coast Air Quality Management District. In addition, the reasons for the 12-month extension should be amended to include provisions for a seller that has taken all commercially reasonable actions in the design, construction, and startup of the project and has demonstrated reasonable progress. This will help ensure that more complex projects are not excluded from the FiT and that public agencies are not placed at a disadvantage due to the fact that the Boards of Directors of many

⁹ See FCE Comments at 9.

¹⁰ See SDG&E Comments at 12.

¹¹ See PG&E Comments at 9-10.

public agencies require that generation projects be conducted in the typical design-bid-build process.

- PG&E's proposed to adjust prices every two months, instead of monthly, and that FiT program capacity should be evenly allocated over a two-year period, instead of a one-year period¹². If it is necessary to adopt a specific waiting period before capacity reassignments begin to occur, this is a more reasonable proposal since it would give more time for project developers to respond to the true market price before capacity reassignments are triggered. The Sanitation Districts also support PG&E's proposal to place all unsubscribed capacity into a single bucket rather than reassigning it to a different product category¹³. This would ensure that all projects have access to the remaining capacity even if they are from a product category that was initially under-subscribed.

II. CONCLUSION

The Sanitation Districts respectfully urge the Commission to make these modifications to the PD in order to ensure the successful participation of biogas energy projects in the FiT program.

Respectfully submitted this 16th day of April, 2012 at San Francisco, California.

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Mark McDannel

¹² See PG&E Comments at 2.

¹³ See PG&E Comments at 7.

VERIFICATION

I am the Supervising Engineer for the County Sanitation Districts of Los Angeles County, and am authorized to make this verification on its behalf. I have read the attached “Reply Comments of the County Sanitation Districts of Los Angeles County on the Proposed Decision Revising Feed-In Tariff Program,” dated April 16, 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 is true and correct.

Executed on this 16th day of April, 2012, at Whittier, California.

/s/ Mark McDannel

Mark McDannel

Mark McDannel, P.E. BCEE
Supervising Engineer

COUNTY SANITATION
DISTRICTS OF
LOS ANGELES COUNTY