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)

COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION ON 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

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In accordance with Rule of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Solar Energy Industries Association (SEIA),[1] 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 issued in the above captioned proceeding on March 20, 2012 (Proposed Decision or PD).

I. INTRODUCTION

What is readily apparent from the Proposed Decision is the significant and commendable effort which has been devoted to revising the current Feed-In Tariff (FiT) Program in a manner aimed at effecting the legislature's intent in the various pieces of enabling legislation. This effort has come not only from Commission Staff, but from the Investor Owned Utilities and all of the participating stakeholders. Indeed, the high level of participation illustrates a keen level of interest in this program by the market for renewable generation. SEIA, however, has a true

[1] The comments contained in this filing represent the position of the Solar Energy Industries Association as an organization, but not necessarily the views of any particular member with respect to any issue.

concern that, unless the PD is modified, this extraordinary expenditure of resources will produce a Feed-In Tariff program which will have little practical use because all but a minimum number of megawatts have already been assigned or are under review, leaving little room for additional market participation. Accordingly, SEIA, as detailed below, requests that certain modifications be made to the Proposed Decision which will provide the opportunity for a more vibrant Feed-In Tariff Program. In addition, SEIA offers a few additional changes to the PD which it believes are consistent with both the statutory requirements as well as the underlying intent of a Feed-In Tariff -- a simple and streamlined mechanism for certain generators to sell electricity to the utility.[2]

II. THE PD MUST BE MODIFIED TO REALLOCATE AND INCREASE THE MWS UNDER THE FEED-IN TARIFF PROGRAM

"Consistent with the statutory directive," the PD would raise the program cap to 750 MW. In doing so, the PD emphasizes that the "750 MW cap applies on a statewide basis" -- i.e., such cap is "not a service territory cap or a cap that solely applies to Commission regulated utilities."[3] The PD declines to consider raising the cap above 750 MWs stating that "the Legislature has created a specific program under § 399.20 limited to 750 MW and this program is, notably, a must-take obligation by utilities."[4] Using the 750 MW cap, the PD then employs the methodology previously adopted by the Commission in Decision 07-07-027 and allocates the MWs statewide, determining that the IOUs proportionate share is approximately 65%, with the POUs retaining 35%. The 65% share allocated to the IOUs is further broken down as follows: PG&E -29% (218.8 MWs); SCE - 30% (226 MWs); SDG&E - 6% (48.8 MWs). After performance of the necessary calculations, what becomes painfully clear is that, absent

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2 *See* Decision 07-7-027, Finding of Fact No. 1, p. 54

3 PD at p. 70.

4 *Id*. at p. 71

modification of the PD, the program created would ***decrease*** the number of MWs afforded SCE from what it currently has under contract or in a queue awaiting contracts in its Feed-In Tariff (CREST) program, and provide PG&E a scant 9 MW increase. From the MW amount allocated to each IOU, the PD would have it subtract the number of MWs it already has under contract or awaiting contracts in the current AB 1969 Feed-In Tariff program. Based on information currently available it appears that both SCE and PG&E have already used their MW allocations either though previously executed contracts or those currently in the queue awaiting review. Thus, as posted on the PG&E website, PG&E has approximately 105 MW currently under contract in its Feed-In Tariff program. Further, PG&E has announced that:

> PG&E has received contracts for review and approval that exceed the available capacity under the Electric Tariff for E-SRG contracts. Due to the large volume of contracts submitted for the E-SRG waitlist, we have suspended any further additions.[5]

And while the SCE website states that it currently has on 75.5 megawatts currently under contract in its feed-in tariff program,[6] it is well known in the industry that there are over 200 MW in SCE's contract queue. What these numbers illustrate is that absent changes to the PD, the Commission will have modified the current Feed-In Tariff program in a manner which will do very little to advance the state's renewable goals. This is clearly a less than ideal result. With this in mind, SEIA offers the following modifications to the PD.

A. Reallocation of MWs Should be Limited to the Additional 250 MW As noted in the PD, the current feed-in tariff program is capped at *500 MW*, with SDG&E's allocation set at 8% or 20 MW, PG&E's allocation set at 41% or 209.2 MW, and SCE's

5 http://www.pge.com/b2b/energysupply/wholesaleelectricsuppliersolicitation

6 http://www.sce.com/EnergyProcurement/renewables/crest.htm

allocation set at 49% or 247.6 MW.[7] Implementing the current statute effectively increases the program by 250 MW. It is this 250 MW (not 750 MW) which should be allocated between the IOUs and POUs using the previously adopted methodology. The statute does not require the Commission to go back and reallocate the MWs that have already been assigned to the three IOUs.

Using such a construct, and the PD determination that SDG&E is to receive 6% of the to-be-allocated MWs, PG&E is to receive 29% and SCE is to receive 30%. The resulting allocation of MWs would be as follows: SDG&E would be allocated an additional 15 MWs for a total of 35 MW; PG&E would be allocated an additional 72.5 MW for a total of 281.7 MW; and SCE would be allocated an additional 75 MW for a total of 312.6 MW. Such an allocation, while not adding a large number of additional MWs to each IOUs' program would, at minimum, provide for a noticeable degree of increase rather than, as the PD would provide, either minimal or no increase.

B. The 750 MW Cap Should Be Increased in Recognition that SB 32 Created a New Feed-In Tariff Program.

Even more important than implementing the recommended allocation set forth above, SEIA submits that the Commission should effectuate its previously utilized authority to increase the 750 MW program cap. As noted in the PD, SEIA raised this issue in its comments. The PD, however, rejects this position, stating that:

> The Legislature has created a specific program under § 399.20 limited to 750 MW and this program is, notably, a must-take obligation by utilities. Based on the plain statutory language of § 399.20, this result cannot be reached.[8]

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[7] PD at p.73.

[8] PD at p. 69

Such an analysis fails to take account of two factors: (1) SB 32 is instituting a *new* Feed-In-Tariff program; the starting point of which should be where the old program left off; and (2) the Commission has in the past used its authority to increase MW limits set in legislation.

Specifically, what the PD ignores is that this is the very same situation which the Commission faced in its implementation of AB 1969. AB 1969 created a specific program for the purpose of procuring RPS-generated electricity from certain water and wastewater customers. It placed a limit of 250 MW on the program and made it a must-take obligation by the utilities. Despite these statutory provisions, the Commission extended to the program to other types of generators not provided for in the statute. Moreover, when doing such, the Commission *increased the program cap of 250 MW provided in AB 1969 by an additional 248 MW.*[9] Thus, the Commission implemented the statute but also built upon the foundational program it created. The Commission can and should do the same here. Accordingly, SEIA would recommend that, as it did in its implementation of AB 1969, the Commission should effectively double the number of MWs set forth in the underlying statute and provide for a FiT Program with a state-wide cap of 1,500 MWs.[10] Such an amount would assure a viable and robust FiT Program -- a result which was envisioned by all stakeholders (the legislature, the Commission, and market participants) who engaged in this process.

If, however, the Commission does not believe it should double the number of MWs available under the program, then, at minimum, it must recognize that the SB 32 FiT Program is a new program which, as a replacement to the AB 1969 program, should start where that program left off. Currently there are approximately 185 MW under contract across all three IOUs

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9 Decision 07-7-027, Finding of Fact No. 30.

10 Under the percentage allocations set forth in the PD, this would result in an allocation of 90 MWs to SDG&E, 435 MWs to PG&E and 450 MWs to SCE.

in the AB 1969 program. This 185 MW should ***not*** be subtracted from each IOUs' allocation under the SB 32 Program as the PD states.[11] Thus, by using the allocation set forth in Section II. A. above, (i.e., only the "new" 250 MW is reallocated) and not counting the MW under contract as part of the AB 1969 program, the IOUs' SB 32 FiT Program would have approximately 667 MW available.

C. Current Feed-In Tariff Program Queues Should Be Eliminated.

The PD, does not provide any clarification regarding the treatment of projects currently existing in the AB 1969 FiT queue. As noted above, both SCE and PG&E currently have a large number of projects in their program queues -- allowing such projects any sort of priority would virtually assure that there was no program capacity available for new participants. Moreover, the SB 32 program should be viewed as a replacement FiT program with new statutory eligibility criteria as well as new project viability criteria.[12] Accordingly, the project queues should be eliminated and, consistent with the protocol set forth in the PD, any generator which was previously in the queue that meets the new program's minimum project viability criteria and statutory eligibility requirements must submit a program participation request form to the utility.[13]

III. THE METHODOLOGY FOR DERIVING THE RATE AFFORDED FEED-IN TARIFF PARTICIPANTS MUST BE MODIFIED

The PD sets a base price for contracts under the SB 32 FiT Program at the weighted average of each IOU's highest executed contract resulting from November 2011 RAM auction. This price will then be adjusted for time of delivery factors based on generators actual energy

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11 PD at pp. 70-71.

12 *See* PD at p.64

13 *See* PD at p. 44

delivery profile. Lastly, the PD would provide for a price adjustment mechanism which purportedly functions "to capture the different costs associated with the renewable distributed generation market segment compared to the RAM market segment."[14] The PD, however, does not adopt either a transmission adder or a location adder to the base price as was recommended by Commission Staff. As discussed below, the rationale behind the rejection of these aspects of the Staff proposal is not merited. In addition, the adjustment mechanism provided by the PD is overly complex and does not comport with today's FiT market. As such, this mechanism must be modified.

A. A Locational Adder is Justified by the Record before the Commission. The only stated justification for declining to adopt the Staff recommended locational adder is:

> agree[ment] with the concerns expressed by SCE and the other utilities that additional scrutiny is needed before the Commission adopts a location adder. Furthermore, the requirement that projects in the § 399.20 FiT Program be "strategically located," as discussed separately in Section 10, addresses the concerns that parties and Staff sought to address through a locational adder, which is to provide an incentive to generators to locate areas with load in order to avoid upgrades to the transmission system.[15]

With respect to the former rationale -- i.e., that additional scrutiny is needed -- SEIA submits that the issue of locational adders has been aired before and scrutinized by the Commission on several occasions, and such an adder is clearly justified in this circumstance. This is particularly clear in the case of avoided distribution line losses. If an SB 32 project's output is consumed on the distribution system close to its location, then it will reduce distribution line losses compared to importing power from more remote generation sources not on that distribution circuit. The utilities regularly calculate distribution loss factors and use them in setting rates; for example, customers who interconnect at lower secondary distribution voltages pay somewhat higher rates than customers served at higher primary distribution or sub-

[14] PD at p. 43.

[15] PD at p.38.

transmission voltages, to reflect the greater losses incurred in serving them at lower secondary distribution voltages. There is no reason why these clearly-avoided distribution line losses cannot be incorporated into SB 32 pricing. The PD should be modified to increase the SB 32 price by the distribution loss factor appropriate to the secondary or primary distribution voltage at which the SB 32 project is interconnected. This loss factor could be determined from a utility's Wholesale Distribution Access Tariff or as part of a project's interconnection study,[16] or could be a generic value based on the distribution loss factors used to set each utility's retail rates.

Moreover, contrary to the statements in the PD, the statutory requirement that a project be "strategically located" does not address the fact that, if such locations truly are "strategic," they must have value for ratepayers. SB 32 clearly provides that, in adopting SB 32 pricing, "the commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff" (Section 399.20[d][3]). In order to provide indifference, the Commission thus is required, as a matter of law, to include this "strategic" value in the adopted SB 32 price through a locational adder. While the PD's definition of "strategically located" may compel projects to locate in certain areas, it does not compensate these projects for the costs which the IOU avoids through such location.

SEIA recognizes that there is strenuous utility opposition to a locational adder. E3 sought to address the key utility concern that avoided distribution costs should be coordinated with utility distribution plans, through its "hot spot" (i.e., high locational value areas) methodology. Further, the Commission has received numerous Self-Generation Incentive

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16 Opening Brief of the Solar Alliance and Vote Solar Initiative on the Implementation of Senate Bill 32, R. 08-08-009 (March 7, 2011) at p. 15.

Program and California Solar Initiative Impact Evaluation reports which show that DG technologies, including solar, reduce peak loadings on distribution circuits, and SEIA has referenced these studies in its briefs and comments in this docket.[17] The PD's cursory dismissal of a locational adder for avoided distribution costs does not show that the Commission has seriously evaluated the substantial record on the value of such reductions in peak loadings on the distribution system, as required under Section 399.20[e] of SB 32. The PD fails to explain why the E3 proposal is inadequate. The PD should be modified to provide a locational adder for the estimated avoided or deferred transmission and distribution costs and line losses calculated for the applicable hot spot.

B. Transmission Adder Recognizes No Transmission Upgrade Costs Imposed on Ratepayers

Staff proposed that a project's share of the transmission costs for the particular RAM contract (*i.e.*, the contract setting the market clearing price) be added to the base contract price. The PD rejects this proposal stating, "we find that the record does not support a determination that the transmission costs for particular RAM contracts constitute the avoided transmission costs for renewable FiT generators under the law."[18] Such a result, however, is not the case. The PD requires that SB 32 projects must be sited such that they will not engender any transmission upgrade costs. As the costs associated with upgrading the transmission system are repaid to the developer by the IOUs over a five year period, if a SB 32 project does not generate such costs, then ratepayers receive a benefit. Accordingly, if an SB 32 project does not trigger transmission upgrade costs, then its contract rate should include the transmission costs that are associated with the RAM contract that is setting the market clearing price, as that RAM contract price is

17 Opening Brief of the Solar Alliance and Vote Solar Initiative on the Implementation of Senate Bill 32, R. 08-08-009 (March 7, 2011) at pp. 13-19.

18 PD at p. 36.

artificially lower due to the fact that ratepayers ultimately will bear the transmission upgrade costs. These transmission costs will clearly be avoided by SB 32 contracts, which the PD requires to have no associated transmission upgrade costs.

C. The Proposed Rate Adjustment Mechanism is Overly Complex.

In order to account for the cost differences between projects that participate in the RAM and those that will participate in the Feed-In Tariff Program, the PD provides for a rate adjustment mechanism. This mechanism could potentially change the rate monthly based on whether a queue with a threshold of five eligible projects with different sponsors is achieved, yet no sponsor enters into a FiT contract at the monthly price. If such a situation occurs, then a price increase will be triggered the following month. Or, if the threshold of five eligible projects with different sponsors is achieved and the full monthly capacity assignments subscribed for a product type, a price decrease will be triggered the following month.

SEIA supports the notion that the cost differences between the two types of projects must be recognized. Indeed, in its comments on the Staff Proposal, SEIA noted that it was "concerned as to whether the RAM program is the best price proxy for SB 32 generators given the RAM is for projects up to 20 MW, which tend to benefit from economies of scale and have lower prices than systems less than 3 MW, for which SB 32 is intended."[19] That said, the complexity which is embedded in the adjustment mechanism which is proposed by the PD is clearly inconsistent with a FiT program, which by definition is "simple and streamlined." Such a mechanism will no doubt create continual market confusion, may render project finance impossibly complex, and discourage participation in the program. Moreover, a contract adjustment mechanism which is triggered downward at a rapid pace (as illustrated in the PD)

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[19] The Solar Alliance Comments on October 13, 2011 Renewable FiT Staff Proposal, R. 11-05-005 (November 2, 2011) at pp. 3-4.

could result in a rush for projects to obtain contracts for fear that the price could drop, unnecessarily crowding the project queue and preventing more viable projects from obtaining contracts. In nearly every state program which lacked a rational and transparent incentive decline mechanism, such was the response, which, among other things, motivates some stakeholders to seek legislative or regulatory changes that further compliance programs. In order to avoid such results, SEIA recommends the following changes to the rate adjustment mechanism.

First, the rate should remain "fixed" for the first six months of the program. In other words it should remain at the derived rate of $89.23 MWh adjusted by time of delivery factors as well as applicable adders (as discussed above). After that initial six month period, a fixed tiered price reduction could be instituted based on statewide MW subscriptions. Thus, for every 100 MW subscribed in the program, the price would decrease by 4% (roughly equivalent to the amount of the first price adjustment in month 2 in the illustrative example contained in the PD). Such tiered reductions are comparable to the tiered incentive structure used in the successful California Solar Initiative Program. The use of such structure would help to prevent a "rush to contract" phenomena which could result from the price adjustment mechanism recommended in the PD as well as provide more market certainty.

IV. THE PD VIOLATES FIRST-COME-FIRST SERVED STATUTORY REQUIREMENT

Section 399.20 (f) provides, in applicable part that:

> An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, *on a first-come-first-served basis*, until the electrical corporation meets its proportionate share of a statewide cap. (emphasis added)

As noted by the PD, "this provision functions to restrict the Commission from creating program requirements that interfere with the first-come-first served requirement as it applies to the program as a whole."[20] This, however, is exactly what the PD would do in its direction to the IOUs to "assign a portion of th[eir] allocated capacity to three product types over 12 months."[21] Both in its direction to allocate MWs to three types of products (baseload, peaking as-available, non-peaking as-available) and to allocate MWs over a certain number of months, the PD would violate the first-come-first-served requirement contained in the statute.

The statute is clear in its requirements. Provided that an electric corporation has allocated MWs remaining, there is nothing in the statue which would allow that electric corporation to refuse to make the FiT available to a qualifying generator merely because it has exceeded an arbitrary monthly quota. The PD does not even attempt to explain how the monthly allocation comports with the first-come-first served statutory requirements.

With respect to the PD's allocation of the assigned MWs over three product types, it attempts to rationalize such allocation by opining that the statute "allows for first-come-first-served on a product specific basis because the statute specifically directs the Commission to consider the value of different electricity products including baseload, peaking as-available, and non-peaking as-available electricity."[22] The PD, however, incorrectly interprets the statute. While PU Code Section 399.20(d)(2)(C) may have given the Commission the authority to provide for a differentiated in price by product category, it does not provide for an allocation of MWs by product category. Such an allocation is clearly inconsistent with the first-come first served principal.

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20 PD at p.54.

21 PD at p. 48.

22 PD at p. 55.

In order to conform with the statutory requirement, the PD must be modified to eliminate the requirement that each IOU assign a portion of its allocated capacity to three product types over a 12 month. Rather, consistent with the statutory requirement of first-come-first-served, any project with meet the statutory eligibility requirements and the Commission determined viability requirements should have the Feed-In Tariff made available to them and be allowed to proceed to contract execution.

V. PROHIBITION ON "DAISY CHAINING" MUST BE TAILORED TO MATCH THE PERCEIVED CONCERN

In order to address the concern that that project developers may break up larger projects into smaller pieces or "daisy-chain" in order to evade the size restriction in the Feed-In Tariff program, the PD directs the IOUs to add a "Seller's Representation to the form PPA under development which at a minimum, requires the seller to attest that the project represents the only project being developed by the seller on any single or contiguous piece of property."[23] SEIA submits that this language must be clarified so that it addresses the concerns raised by certain stakeholders-- i.e. evasion of the Feed-In Tariff program size restriction -- but does not preclude developers from locating multiple projects per site provided that the aggregate capacity of projects on a single site does not exceed 3 MW. Thus as expressed by TURN and CUE, the concern was precluding the "possibility that developers may artificially *subdivide larger projects into 3MW increments* to take advantage of the FIT program."[24] The concern was not that developers may subdivide a 3 MW project into, for example, 1 MW increments, because such phasing does not evade the Feed-In Tariff program size restrictions.

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[23] PD at p. 58.

[24] *See* Opening Comments of the Utility Reform Network and the Coalition of the California Utility Employees in the Administrative Lase judge's Ruling Setting Forth Implementation Proposals for SB 32 and SB 2_ 1x Amendments to Section 3399.20, R. 11-05-005 (July 21, 2011) at p. 7

Moreover, given the fact that SB 32 Program will be replacing the AB 1969 program, sites that have a 1.5 MW project under the current program should be able to expand on the same site and add an additional 1.5 MW once SB 32 is approved. Again, this should be permitted so long as the aggregate per site does not exceed 3 MW.

VII. DUAL TIME-OF-DELIVERY STRUCTURE TO FULFILL RESOURCE ADEQUACY REQUIREMENT SHOULD MAINTAIN CURRENT TOD FACTORS FOR ENERGY-ONLY PROJECTS

In order to address the statutory requirement that "the physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380," the PD is requiring the IOUs to offer two sets of time-of-delivery factors: one for generators that do not provide resource adequacy and another for generators that do provide resource adequacy. SEIA recognizes that it is necessary for the Commission to address the statutory resource adequacy requirement and is not opposed to the recommendation advanced by the PD *provided* that the PD clearly states that those projects which retain energy-only status will receive the current TOD factors contained in the Commission's Resolution E-4442 adopting the2011Market Price Referent. The reality is that given the size of the projects that will participate in the SB 32 FiT Program and the costs of obtaining full deliverability status, it is highly unlikely that any of these projects will provide resource adequacy. For those that do, this should be recognized by affording them an enhanced TOD factor, not by lowering the current TOD factor available to energy-only projects.

VIII. THERE IS NO BASIS FOR PRECLUDING FIT PROJECTS FROM THE RAM PROGRAM

The PD would prohibit generators with a nameplate capacity of 3 MW and under and that meet other eligibility criteria for the FiT Program, from participating in the RAM Program if the capacity for the relevant FiT product type has not yet been reached. There is no basis for such a prohibition. SEIA submits that not only could the Commission be legally barred from doing such at this time, but even absent such prohibition, there is no basis for the Commission to preclude FiT projects from participating in the RAM program.

In Decision 10-12-048, the Commission established the RAM program for projects between1-20 MW. Precluding certain projects 3 MW and under from participating in that program would be a change to Decision 10-12-048. Under PU Code 1708, the Commission is required to provide adequate notice and an opportunity to be heard to parties that participated in the RAM proceeding prior to effecting a change to that Decision. Such procedure has not been followed here. Moreover, there does not appear to be sufficient justification for precluding FiT projects from participating in the RAM program. The RAM is a competitive program pursuant to which price is the sole criterion for bid selection is price. The Feed-In Tariff project that bids in the RAM program will only be selected if it falls within the least expensive projects in its project category. If, as set forth in the PD, such a project "inflate[s] a bid in the RAM Program because it would be able to fall back to the Feed-In Tariff Program," then all such "inflation" would do is prevent the project from being selected in the RAM. There would be no benefit to a developer to artificially inflate its bid.

For these reasons, SEIA submits that the PD should be modified to remove the prohibition of FiT projects competing in the RAM. If the Commission, however, ultimately determines to retain this preclusion, at minimum, the PD must be modified to proscribe specific protocols for informing generators when the capacity for the relevant FiT product type was "full" so that systems below 3 MW in that product type would be free to bid to the RAM program.

IX. THE PD'S INTERPRETATION OF THE STATUTORY REQUIREMENT OF STRATEGICALLY LOCATED" MUST BE CLARIFIED

In order to sell electricity under the FiT Program, SB 32 requires that the electric generation facility be "strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers."[25] The PD interprets that statutory provision to mean that:

> [A] generator must be interconnected to the distribution system, as opposed to the transmission system, and, in addition, must be sited near load, meaning not in an area with such low load that interconnection of the proposed generation would require utilization of the transmission system and new transmission infrastructure.[26]

While SEIA does not take issue with the basic tenets of the PD's interpretation -- i.e., interconnected to the distribution system and sited near load -- the manner in which the PD would "implement" such a definition could have the practical result of precluding from participation in the FiT program the very projects which SB 32 targeted for interconnection. Thus, the PD states:

> To implement our interpretation of subsection (b)(3), we find that if a project's most recent interconnection study shows that the project requires transmission system network upgrades, that project will no longer be eligible for the § 399.20 Feed-In Tariff Program.[27]

Strictly interpreted, the PD would preclude participation if a project engendered *any* transmission system upgrade. But such upgrades are quickly becoming a practical reality for all but the very smallest of systems. For example PG&E is requiring all projects larger than 2 MW

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[25] *See* PU Code Section 399.3020(b)(3).

[26] PD at p. 62.

[27] *Id.*

in size install a Direct Transfer Trip,[28] which is considered a transmission system upgrade. Moreover, as more and more projects become interconnected to the IOUs' distribution system, the number which trigger some type of transmission upgrade will increase exponentially.

Accordingly, for purposes of meeting the statutory requirement, SEIA recommends, consistent with its earlier comments in this proceeding, that any generator interconnected to the distribution system should fall within the parameters of "strategically located" for initial application to the program. Even with this broader definition of "strategically located," projects will still be incented to locate on the distribution system close to load (and thus potentially not implicating any transmission cost upgrades) as failure to do such may result in the loss of the locational adder.[29] Moreover, if it is ultimately determined that the project will trigger a transmission upgrade, then the developer should be afforded the option of whether or not to pay for such upgrade. Again such structure still incents developers to locate projects at sites that have low probability of transmission system impacts, as failure to do so will effectively result in a loss of the transmission adder.[30]

X. THE PD EFFECTS AN APPROPRIATE RESOLUTION OF PARTICIPATION IN THE FIT PROGRAM BY CSI AND SGIP GENERATORS

As noted in the Proposed Decision, PU Code § 399.20 (k) requires owners of eligible generation facilities to refund any incentives received from the California Solar Initiative (CSI) or the Small Generator Incentive Program (SGIP) before participating in the FiT Program.

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28 A DTT system is a typical type of system installed for high-speed tripping of the generator's station equipment. When a line fault occurs, the DTT equipment clears the fault quickly and helps to protect the generator from any damages.

29 See discussion in Section in III. B, *supra.*

30 While the transmission adder would still be included in the rate, the developer will have "paid" for the adder through the requirement of paying for the transmission system upgrades.

Throughout this proceeding, SEIA has argued that the Commission should approach the implementation of this statutory provision keeping in mind the overarching state goal of increasing the availability and use of renewable power. Thus, SEIA submitted that SB 32 should be viewed as an opportunity to spur new development and provide an additional source of renewable energy to be applied toward the state's RPS goal. Allowing generators operating under either the CSI or SGIP program to convert to the SB 32 program does not enhance the overall opportunity for the development of new renewable power in the state.

The PD does not preclude generators operating under either the CSI or SGIP program to convert to the SB 32 program, but recognizes and agrees with the position advanced by PG&E that "customers who participate in the CSI or SGIP be required to provide the benefits of their distributed generation installation for a period of ten years and that these customers be held to that commitment, for which they have been compensated."[31] Thus the PD would allow CSI or SGIP generators to participate in the § 399.20 FiT Program (owing no refunds) only after it has been online for at least ten years.

SEIA agrees with PG&E that customers who participate in CSI and SGIP afford benefits to their interconnecting utility and its customers. It is in the best interest of utility and their ratepayers to ensure that they continue to receive these benefits. Accordingly SEIA can support the middle ground approach taken by the PD - deferring participation by CSI and SGIP generators in the FiT program and thereby spur new development while also protecting the utility and ratepayer investment in distributed generation.

[31] PD at p. 94.

XI. CONCLUSION

SEIA respectfully requests that the modifications to the PD recommended herein be made so that the resulting SB 32 Feed-In Tariff program will be a viable program which will serve to advance the state's renewable goals.

Respectfully submitted this 9th day of April, 2012 at San Francisco, California

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Attorneys for the Solar Energy Industries Association

VERIFICATION

I am the attorney for the Solar Energy Industries Association in this matter. The Solar Energy Industries Association is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of the Solar Energy Industries Association for that reason. I have read the attached "Comment of the Solar Energy Industries Association on 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" 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 9th day of April, 2012 at San Francisco, California.

/s/ Jeanne B. Armstrong
Jeanne B. Armstrong

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