

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Rulemaking 11 05 005
Implementation and Administration of (Filed May 5, 2011)
California Renewables Portfolio Standard Program.

**MOTION OF PLACER COUNTY AIR POLLUTION CONTROL DISTRICT TO REOPEN THE RECORD
AND MOTION FOR OFFICIAL NOTICE OF FACT REGARDING JANUARY 2012 PG&E, SCE and
SDG&E SMALL POWER PRODUCTION SEMI ANNUAL REPORTS**

Pursuant to Rule 13.14 and Rule 13.9, the District hereby requests that the Commission reopen the record in order to take official notice of the current non FIT <3 MW contracts in place within IOU service territories.

The District's issue stems from the paragraph within the decision found at the top of page 77 of the Final Decision. Within that paragraph, the Commission states "We find that all capacity already under contract within the existing FIT program must be subtracted from each utilities' total capacity allocation." This language within the Decision does not clarify whether or not existing contracts will be allocated by category (power type category) or divided up evenly regardless of the nature of the existing contracts, and it does not take into account the many existing contracts outside of the program that could expire and bid into the program within the crucial opening months of the program, thereby effectively squeezing out higher priced technologies.

There is nothing within Section 399.20, or more specifically within Section 399.20(f), that states that any already existing contracts should be subtracted from the new 750 MW capacity allocation. The legislation describes that every kilowatt hour of electricity purchased will count towards meeting the IOU's RPS and resources adequacy requirements under Section 380 (within Subsections h and i), but it does not specify that previous executed contracts will be included within the allocation. Based on the level of specificity that the legislature undertook

within other sections of this statute, it is clear that there was no overt intention to count existing contracts within the new capacity allocation. And, as a matter of public policy, they should not be included.

The CPUC has broad authority to interpret legislation. In SDG&E v. Superior Court¹ the Court stated that the Commission has far reaching duties, functions and powers. The California Constitution, Article XII Sec. 16, confers broad authority, and that those powers are not restricted to those expressly mentioned in the constitution: the legislature has plenary power, unlimited by the other provisions of the constitution... to confer additional authority and jurisdiction on the Commission.² The court goes on to cite Section 701 of the Public Utilities Code, and then state that “the Commission’s powers are not limited to those expressly conferred on it: the legislature further authorized the Commission to ‘do all things’, whether specifically designated within the Public Utilities Code, which are necessary and convenient in the exercise of its jurisdiction over public utilities.”³ Based on this authority, it is clear that silence within a statute is not a basis for the CPUC to claim any particular legal outcome; rather the policy implications of the Commission’s choices should be carefully considered.

The policy basis for concluding that the current contracts should be included within the new program leads to much uncertainty and potentially negative effects. Base load renewable power production was crucial in satisfying the legislative and public policy mandate of 399.20. Based on the language within the Decision on Page 77, it is not clear how the existing FiT contract allocations under AB 1969 FiT program will be calculated. For example, PG&E has 106.5 MWH under contract/in production,⁴ approximately 22 MWH are with producers of base load power, and it is not clear how that amount and the remaining amounts will be allocated between the three product categories.

The District asks the Commission to be thoughtful about taking the position that existing contract capacities should be spread out evenly though out the product categories regardless of the contract’s underlying energy production type. The Commission staff should review all

13-Cal.4th 893, p. 915

id.

id @ p. 916.

Existing Executed FiT Contracts for PG&E;

<http://www.pge.com/b2b/energysupply/wholesaleelectricssuppliersolicitation/standardcontractsforpurchase/>

MW contracts that exist within all three IOU territories and assess how those contracts would affect total capacity allocations in order to determine the consequences for each product category. Allowing for contracts that are within one product category to impact the capacity of another product category is counter intuitive and may cause confusion or negatively impact particular power producers in unequal ways.

Secondly, there is an unknown negative impact that could occur if existing non FIT contracts expire and bid into the new program within the next three years. For example, the District has reviewed the Pacific Gas and Electric Cogeneration and Small Power Production Semi Annual Report issued January of 2012, and has calculated that there are 73.7 MW of base load power being produced by < 3 MW facilities within the PG&E territories.⁵ (If you determine that cogeneration does not fall within the base load power category, then there is 63.2 MW in production.) There are also a significant amount of existing contracts that could bid in within the other two IOU service territories.⁶ An unknown amount of these contracts could expire within the next 36 months, and such power producers would then be eligible to bid into the FIT program. These power producers will have a distinct advantage, as they been in production for many years and are established businesses. The combination of existing FIT contracts and other contracts that might expire within the next 36 months could significantly diminish product categories and hinder the success of the program.

There are many potential current small forest biomass facilities that are in various stages of development that are waiting for this program to begin. (Please see attachment "A"). Before the District discovered this problem within the PG&E service territory, the District was planning on making a motion to request the Commission develop the contract template for the program and run the auction simultaneously so that potential forest biomass facilities could begin operations soon, and possibly take advantage of some federal tax credits (The Producer Tax Credits which expire at the end of 2013 and Investment Tax Credits) that provide significant financial support for renewable power projects by offering valuable incentives for

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⁵Qualifying Facilities Semi Annual Reports of PG&E can be found at;
<http://www.pge.com/b2b/energysupply/qualifyingfacilities/cogeneration/>
⁶Qualifying Facilities Semi Annual Reports of SDG&E and SCE can be found at;
<http://www.sce.com/AboutSCE/Regulatory/qualifyingfacilities/dataanddocuments.htm>
http://sdge.com/qualifying_facilities/ffi

equity partners that reduce the risk of investing into new technologies. Unfortunately, this problem has arisen and should not be ignored. The District is not looking for delay, but rather quick, well thought out resolution.

Ultimately, the District believes that the best resolution is to exclude existing contracts from the capacity requirements required under 399.20(f). If the Commission chooses to include such contracts, the Commission should explicitly describe how such existing contracts will affect the product categories.

The District also asks the Commission to restrict existing non FIT producers who have contracts that expire within the next twenty four months from the program. Or, alternatively, those contracts could be renewed through the FIT program if they qualify and they choose to do so, but those contracts should not count towards the IOU'S fulfillment of the FIT 750 MWH requirement. Otherwise, an analysis of the expiration dates of existing contracts must be done so that the Commission will have a full understanding of the effect those producers will have on the market demand within the program. These existing producers will have a significant ability to underbid any new emerging technologies and as such they could significantly undermine the success of the program. Based on this potential issue, the Commission may want to take official notice of all three of the semi annual Qualified Facilities reports filed by the IOUs in January of 2012.

CONCLUSION

PLACER COUNTY AIR POLLUTION CONTROL DISTRICT respectfully requests the Commission grant the motion for reopening the administrative record in order to take official notice of the Small Power Production Semi Annual Reports filed by all three IOUs dated January 2012 pursuant to Rule 13.14 and 13.9. The District notes that this motion is the basis for the

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Application for Rehearing of D. 12 05 035 separately filed in order to resolve the problem within the Final Decision submitted on May 31, 2012, as stated within this motion.

DATED: June 27, 2012

Respectfully re submitted,

/s/ Christiana Darlington

CHRISTIANA DARLINGTON

General Counsel for

PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

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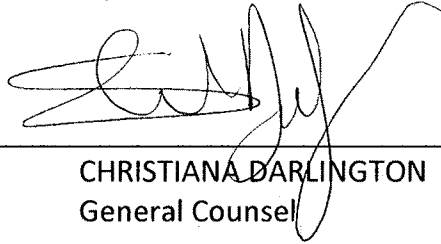
cdarling@placer.ca.gov

VERIFICATION

I am an officer of the non-profit organization herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of July, 2012, at Auburn, California.



CHRISTIANA DARLINGTON
General Counsel

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ATTACHMENT "A"

Community Scale Forest Bioenergy Facilities in California

Bioenergy facilities that use excess forest biomass as fuel can help mitigate the unhealthy, overstocked condition of the California's forests and reduce the threat of catastrophic wildfire. Development of additional biomass power generation facilities that are strategically located near forest communities and valuable assets (transmission and distribution infrastructure, upland watersheds serving hydropower facilities and domestic water supplies) would provide a ready market for biomass removed as a byproduct of forest restoration and fuels reduction activities.

Listed below are community scale forest bioenergy facilities that are currently in development.

Community Scale Forest Biomass Projects Currently in Development

SPONSOR	LOCATION	SCALE
Placer County	Truckee, California	2 MW
North Fork Community Development Council	North Fork, California	1 MW
Calaveras Healthy Impact Products Solutions, Inc.	Wilseyville, California	3 MW
Indian Valley Community Service District	Greenville, California	3 MW
CDF Parlin Fork Conservation Camp	Fort Bragg, California	1 MW
Yuba County Watershed Protection & Fire Safe Council	Marysville, California	3 MW
Eastside Biomass Project	Mammoth Lakes, California	1 MW
Dinkey Collaborative/Southern California Edison	Shaver Lake, California	1 MW
Unity Forest Products	Yuba City, California	1 MW
	TOTAL	16 MW