

**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)

**RESPONSE OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION
TO MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR
CLARIFICATION REGARDING STATUS OF EXISTING ASSEMBLY BILL 1969
FEED-IN TARIFF PROGRAM UNDER DECISION 12-05-035**

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Dated: June 28, 2012

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In accordance with Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Solar Energy Industries Association (SEIA)¹ responds to the Motion of Southern California Edison Company (SCE) for Clarification Regarding Status of Existing Assembly Bill 1969 Feed-in-Tariff Program under Decision 12-05-035 filed in the above captioned proceeding on June 21, 2012 (Motion).

I. INTRODUCTION

On May 31, 2012, the Commission issued D.12-05-035 (the Decision) addressing the necessary changes to the Investor Owned Utilities' (IOU) current AB 1969 feed-in-tariff programs in order to effect the statutory amendments to Public Utilities Code Section 399.20 enacted by Senate Bill (SB) 380, SB 32, and SB 2 1X. As raised in SCE's Motion (at p. 2), the Decision is "unclear whether [it] closes the existing AB 1969 program to any projects that had not executed a contract before the effective date of the Decision (May 24, 2012)" or whether

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.

the existing AB 1969 feed-in-tariff program and associated tariffs would remain effective until the tariffs containing the new rules adopted by the Decision are approved, which as noted by SCE is several months away. SCE seeks clarification as to the Commission's intent on this issue, further requesting that if the Commission's intent was to close the AB1969 feed-in-tariff program on the effective date of the Decision, it provide a minimal extension to June 30, 2012.

SEIA concurs with SCE that the language in the Decision with regard to this issue when read in isolation is unclear. However, when the various applicable provisions of the Decision are read in concert, SEIA submits that the intent is for the existing AB 1969 feed-in-tariff program to remain open and effective until replaced by Commission-approved tariffs containing the new rules adopted by the Decision. Accordingly, SEIA requests that the Commission expeditiously issue a ruling clarifying that the AB 1969 feed-in-tariff program in each of the IOUs' service territories will remain available to qualifying market participants until such time as the program modifications are fully implemented or such time that the IOUs have met their MWs under the program.

II. CURRENT AB 1969 PROGRAMS SHOULD REMAIN IN EFFECT UNTIL COMMISSION APPROVED TARIFFS CONTAINING NEW PROGRAM RULES ARE IMPLEMENTED

As noted by SCE (Motion at p. 2), in addressing the issue of the transition from the existing AB 1969 program, the Decision provides:

We agree that generators had ample notice that the rules would change. We also note that the Commission's general policy is to apply the rules in place at the time the contract is executed. No contracts exist for those projects identified by Silverado in the queue. Therefore, *we find that projects in the queue and without a contract must comply with the new rules adopted today.*²

² Decision 12-05-036 at p. 103

Given this language, SCE raises the prospect that any generator that did not have an executed contract as of May 24, 2012 would not be eligible for the current AB 1969 programs. This language, however, must be read in context of the entire decision.

As noted by SCE (Motion at p.1), the Decision issued on May 24, 2012, is the first of two decisions which must be issued in order for the new feed-in-tariff program (the Re-MAT) to go into effect. It is still necessary for the Commission to approve IOU tariffs and a standard power purchase agreement (PPA) affecting the new program. In this regard, in Ordering Paragraph 1 as well as Ordering Paragraphs 11 through 17 of the Decision direct the IOUs to incorporate into their tariffs and/or standard contracts the adopted pricing methodology as well as various program rules and requirements. In each instance the Decision states that “[t]he Commission will review these provisions and, in a separate decision accept, reject, or modify the provisions.”³ In other words, the exact formation of the rules which will be set forth in the IOUs tariffs and standard PPA have not yet been approved. The only Commission-approved rules with respect to feed-in-tariffs that are currently in effect are those pertaining to the AB 1969 program. As stated in the Decision, “the Commission’s general policy is to apply the rules in place at the time the contract is executed.”⁴ At such time that the IOUs file their Re-MAT Tariffs and Standard PPA and they are approved by the Commission, then the Re-MAT rules will be the ones “in place” and any project in the queue at that time which has not executed a contract will need to comply with the new rules. Until that time (or until an IOU meets its MW allocation under the AB 1969 program), the IOUs should be required to continue to process applications made under the AB 1969 program and, upon a generator meeting all eligibility requirements, execute a contract.

³ *Id.*, Ordering Paragraph 1; *see also* Ordering Paragraphs 11 through 17.

⁴ *Id.* at p. 103.

III. CONCLUSION

At present, the timeline for implementation of the new feed-in-tariff program rules adopted by Decision 012-05-035 is unknown. There is no indication of Commission intent to suppress the current program awaiting implementation of these new program rules. To the contrary, as illustrated above, the language of the Decision, when read as a whole, indicates that until such time as all program modifications can be fully implemented, the existing feed-in-tariffs should remain available to qualifying market participants. SEIA respectfully requests that the Commission expeditiously issue a ruling to this effect.

Respectfully submitted June 28, 2012 at San Francisco, California.

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By /s/ Jeanne B. Armstrong
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VERIFICATION

I am the attorney for the Solar Energy Industries Association (SEIA) in this matter. SEIA 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 SEIA for that reason. I have read the attached "The Solar Energy Industries Association to Motion of Southern California Edison Company (U 338-E) for Clarification Regarding Status of Existing Assembly Bill 1969 Feed-In Tariff Program Under Decision 12-05-035." 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 28th day of June, 2012, at San Francisco, California.

/s/ Jeanne B. Armstrong
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