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 (May 5, 2011)

PETITION OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION FOR MODIFICATION OF DECISION 12-05-035

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In accordance with Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Solar Energy Industries Association (SEIA),[1] submits this Petition for Modification of Decision 12-05-035 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 May 31, 2012 (Decision).

I. INTRODUCTION

The Decision effects a significant change to the structure of the feed-in-tariff programs currently offered by the Investor Owned Utilities (IOU) pursuant to AB 1969. The Decision would implement a structure under which three separate product queues are created with a set amount of MW allocated to each, and the price for each product varying based upon the number of subscriptions and projects in the queue. This significant change from the current construct (*e.g.*, one program queue with price set at MPR) necessitates detailed implementation processes, certain of which were not addressed by the Decision. Accordingly, SEIA submits this Petition

[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.

seeking certain modifications to the Decision in order to provide greater clarity to program protocol as well as ensure that such protocol comports with statutory requirements.

As the Commission is acutely aware, SB 32, which was enacted over two years ago, directed the Commission to implement significant changes to the statutorily mandated feed-in-tariff program. Given the extensive changes ordered by the Legislature in SB 32, the industry has been keenly awaiting its implementation. Currently, the Commission is in the process of reviewing and approving the joint standard power purchase agreement (PPA) submitted by the IOUs as well as the IOUs' individual tariffs. A Commission decision must be issued for the purpose of approving the PPA and tariffs in order for the SB 32 program to go forward. To ensure that there is clarity in the industry as to how the program will be implemented prior to its actual commencement, SEIA requests that the issues raised in this Petition for Modification be addressed concurrently with the Commission decision addressing the PPA and accompanying tariffs.

II. THE DECISION SHOULD BE MODIFIED TO PROVIDE GREATER CLARITY AND ENSURE STATUTORY COMPLIANCE

A. Megawatt Allocation Methodology Must be Modified

The protocol for the allocation of program MW apportioned to each IOU is set forth in the Decision as follows:

> In addition to allocating the program capacity among the three utilities, as discussed in Section 12.3, we direct utilities to assign an equal portion of this allocated capacity to three product types over 24 months, i.e., baseload, peaking as-available, and non-peaking as-available. Any remaining unsubscribed capacity at the end of a two-month period is reallocated to the end of the 24 months, starting with a new period, Months 25-26. The MW should be spread out among Months 25-26 and further in a manner that reflects the initial allocations across Months 1-24.[2]

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[2] Decision 12-05-035, at p. 49.

The stated rational for this adopted allocation design was "to stimulate the market for small renewable distributed generation by providing an adequate supply of available capacity to each product type in response to demand."[3] As illustrated below, in order to comport with legislative intent, assure statutory compliance as well as to provide more flexibility in program administration, certain modifications should be made to the adopted allocation construct.

1. Current Allocation Rules are Overly Restrictive, Running Counter to Legislative Intent

The results of such Decision's allocation protocol on a per product basis are illustrated in the following chart:

	PG&E	SCE	SDG&E	Total
Total MW (D.12-03-035)	218.8	226	48.8	493.6
Contracted MW (as of 5/31/2012)	106.5	75	15	196.8
Remaining MW	**112.3**	**150.7**	**33.8**	**296.8**
REMAT Product Allocation (1/3 of Remaining)	37.4	50.2	11.3	98.9
REMAT Bi-monthly Product Allocation (Product Allocation Divided by 12 bi-monthly procurements)	**3.2**	**4.2**	**0.9**	8.2

* Even though SDG&E's allocation would be less than 1MW, they would be required to make 3MW available per product type in the first Re- MAT period.[4]

As illustrated by the chart, the Decision's adopted allocation protocol could result in only one project per IOU per product category being awarded a contract under the SB 32 program each bi-monthly period. Such protracted eking out of the available MW runs counter to the intent behind SB 32 which was to provide a vehicle for expedited interconnection of smaller renewable projects. Over two years later the program is still not implemented while projects in certain of the product categories have been developed and waiting program initiation. Accordingly, in order to get the program's limited MW to market, SEIA recommends that the

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3 *Id.* at p. 42.

4 Decision at p. 49.

Decision be modified so that the initial program period of 24 months be reduced to 12 months. In other words, each IOU would assign an equal portion of its allocated capacity to three product types *i.e.,* baseload, peaking as-available, and non-peaking as-available, over 12 months. In conjunction with this change, program contracts should be made available every month (instead of bi-monthly) for the allocated number of MW.

Shortening the initial program period from 24 to 12 months will not undercut the underlying objective of the Decision's adopted allocation methodology -- i.e., ensuring that all product types have sufficient opportunity to participate in the program -- provided that the adjustments to the Re-MAT pricing occur monthly. Specifically, the Re-MAT currently provides for the base contract price for a given product type to rise each two month period that such product type is undersubscribed. For example, if the baseload product type remains undersubscribed at the end of Month 10 then the contract price for a qualified baseload product would rise to $60.00 /MWH over the starting price ($89.23/ MWH). Under SEIA' proposed modifications, this same result would occur much more rapidly -- *i.e.*, in Month 5. Thus, for more expensive technologies, the 12 month program will quickly enhance the Re-MAT starting price, thereby affording them a more expeditious opportunity to viably participate in the program.

2. The Current Allocation Rules Should be Clarified to Ensure the Greatest Number of MWs are Available Each Contract Period

In order to provide more flexibility to the IOUs in awarding contracts, as well a potentially increase the number of contracts which can be awarded each month, SEIA submits that the allocation methodology should be further clarified as specified below.

The Decision provides that MW currently under contract in the IOUs' AB 1969 Feed-In-Tariff programs must be subtracted from the total MW available under the program. What the

Decision does not specify, however, is how any of these MW will be added back into the bi-monthly allocation if their underlying contracts are terminated (*e.g.,* AB 1969 project does not timely come on line). SEIA submits that in order to allow the potential for a greater number of contracts awards during the initial 12 month SB 32 program,[5] any MW which are "freed up" as a result of a contract termination in the AB 1969 program, should immediately be added back to the amount of MW available during the first 12 months of the SB 32 program (*i.e.*, these MW should not be held and only made available for contract after the initial 12 month program). Such is consistent with the original SB 32 program MW allocation -- *i.e.*, if the MW had not been under contract as part of an IOU's AB 1969 program, then they would have been part of the total which the IOU would have originally allocated over the initial 12 month program.

In addition, it should be noted, that the specific division of available MW across 12 monthly periods for each product type could readily result in a situation in which an IOU has awarded, *e.g.*, one contract, but the next project in the queue is sized such that it would result in the IOU exceeding its monthly allocation. For example, if PG&E has 3.2 MW available for SB 32 projects in the as-available peaking category in a month, and the first two projects in the queue are 2 MW and 1.5 MW, respectfully, then awarding a contract to the second project would result in PG&E exceeding its monthly MW allocation. In such instances, SEIA submits that the IOU should be allowed to procure above the monthly allocation to account for the actual size of the next project in the queue that would fulfill (and then exceed) the 3.2 MW allocation by

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[5] The reference to the initial 12 month program is consistent with the requested modification SEIA made above in Section II. A. 1. If that recommendation is not accepted, the following recommendations made in the remainder of this Section II. A. would still stand, but be based on the initial 24 month program, consisting of 12 bi-monthly periods.

product type.[6] The MW allocation should be seen as proximate guidelines and not rigid barriers preventing a smoothly operating program.

3. The Current Allocation Rules Must be Modified to Ensure Statutory Compliance

Section 399.20 (f) of the Public Utilities Code 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 Decision, "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."[7] At initial read, however, it would appear that this is exactly what the Decision would do in its direction to the IOUs to "assign a portion of th[eir] allocated capacity to three product types over 12 months."

The statute is clear in its requirements. Provided that an electric corporation has allocated MW remaining, there is nothing in the statute which would allow that electric corporation to refuse to make its feed-in-tariff available to a qualifying generator merely because the IOU has exceeded a monthly product quota. Accordingly, in order to ensure that the allocation methodology provided for in the Decision falls within the statutory parameters, the Decision must be clarified to provide that any unsubscribed MW in a product type may be reallocated to another product type after 12 months.[8] Such reallocation of the program MW after a year does

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[6] Moreover, the amount by which the project exceeds the bi-monthly MW allocation (e.g., in the given example, 0.3 MW) should not be subtracted from the next monthly allocation, but rather reconciled in either the last period of the initial 12 month program, or in months 13-14.

[7] *Id.* at p. 62.

[8] It should be noted that the PD in this proceeding provided for the IOUs to reassign capacity to the different product types after the expiration of 12 program months. " The utilities will use the following reassignment formula: after Month 12, the utilities may reassign any capacity from a

not undercut the Commission's stated objective of ensuring that all product types have sufficient opportunity to participate in the program. This objective will be achieved by maintaining separate product queues / allocations in conjunction with the Re-MAT pricing for a reasonable period of time. As illustrated above, the base contract price for a given product type will rise each month that such product type is undersubscribed, quickly escalating the contract price. Thus, for more expensive technologies, while the initial pricing may be too low to provide cost-effective participation, the Re-MAT will quickly enhance that price, thereby affording them the opportunity to viably participate in the program.

If, however, after 12 months certain product categories, having been afforded a reasonable opportunity to participate, remain undersubscribed while other product categories have an existing queue, then the first-come-first-served statutory requirement necessitates that any unsubscribed capacity from the former product categories be made available to the latter.

B. SB 32 Program Queue Requires Additional Considerations.

The Decision orders the following protocol for the establishment of a program queue:

> [I]nterested generators that meet the program's minimum project viability criteria must submit a program participation request form to the utility. Once the participation request form is deemed complete, the utility will establish a queue on a first-come-first-served basis for each product type.[9]

Given the high level of interest in the program and the limited number of MW available, placement in the queue will be of critical importance to generators. Thus, more precise consideration needs to be given to project placement for projects whose "deemed complete"

> product type that has received minimal to no subscriptions during the previous 12-month period. In Month 13, the utilities should reassign 5% of the capacity from these products to other products with a combination of the highest average net market value49 and the most robust market subscription. In Month 14, the utilities should reassign 10% of the remaining capacity. In Month 15, the utilities should reassign 20% of the remaining capacity, then 40%, and so on. (PD at p. 49)

[9] Decision at p. 45.

program participation forms are submitted on the same date. Under such circumstances there needs to be an established procedure for ranking projects in the queue

As noted above, for an application to be "deemed complete" it must meet the minimum project viability criteria established in the Decision. One of these criteria is that the applicant have completed either a System Impact Study, a Phase I study, or have passed the Fast Track screens. In other words, one of the project viability criteria would compel the applicant to have a position in the interconnection queue. Given the fact that interconnection often plays a role in delaying the on-line date of a project, SEIA submits that if "deemed complete" applications are submitted on the same day in an IOU's feed-in-tariff program, than the application that is ranked earlier in the interconnection queue should receive the priority position in the IOU's feed-in-tariff queue. Such ranking should help to assure that feed-in-tariff projects that receive a contract from an IOU will come on line in a more timely fashion.

C. Modifying RAM Program to Prevent Projects 3 MW and Under from Participating is Unnecessarily Prohibitive and Detrimental to Policy Goals.

The Decision would prohibit generators with a nameplate capacity of 3 MW and under 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.[10] The stated rationale for this prohibition is that the program overlap for projects 3 MW and under could result in the gaming of the price of the two programs for projects of that size. Given the limited scope of the SB 32 program, this preclusion of generators of 3 MW and less from participating in the RAM may unnecessarily result in projects of this size currently under development from going into service.

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[10] *Id.*, at p. 68.

As illustrated above, once currently contracted MW under the AB 1969 program are subtracted from the total program capacity available to the investor owned utilities, there will be less than 300 MW remaining. Using the Decision's current allocation methodology in which this MW total is divided equally between each of three product categories -- baseload, peaking as-available, non-peaking as-available -- fewer than 100 MW of solar photovoltaic projects will be able to obtain contracts under this program. Accordingly, a project toward the back of the SB 32 queue, regardless of its competitiveness, may never be able to obtain a contract under that program. Under the Decision's construct, however, it would have to wait until the all capacity for its product type (peaking as-available) has been allocated by the IOUs in the monthly allocation process prior to participating in the RAM program (which given the current schedule which the RAM program is on, may have been completed by that time). This result is unnecessarily punitive and will restrict growth in this market segment to the detriment of California policy goals.

Projects should be allowed to pursue a contract in any available procurement program until they receive a contract, at which point they should be removed from all other queues and/or be prevented from bidding into any other programs until or unless that contract is voided. This will address any potential gaming concerns (i.e., by preventing a project that has a contract in one program attempting to achieve a higher price in another program) while not artificially restricting market.

Indeed, the concern that projects 3 MW or less could in some fashion manipulate the pricing of the RAM due to their ability to fall back on the Re-MAT process presupposes that the supply of projects bidding into the RAM is less than the demand. There is no evidence that such is the case. Accordingly, competition will drive the price -- a project that is 3 MW or less that

bids too high in the RAM will simply not win the bid. There would be no benefit to a developer to artificially inflate its bid.

D. Existing Wholesale Distribution Access Tariff (WDAT) Requests Should Be Grandfathered In Once Tariff Rule 21 Revisions Have Been Finalized.

In addressing the requirements of PU Code Section 399.20(e) which requires the provision of expedited interconnection procedures for qualifying generators, the Proposed Decision in this proceeding found that:

> [U]ntil the Commission makes a final determination in R.11-09-011, utilities shall allow generators to choose which interconnection processes to use, either the process set forth in the Tariff Rule 21 or the FERC interconnection procedures under the Wholesale Distribution Access Tariff(referred to as "WDAT").[11]

In response to comments requesting that Commission allow interconnection under both Rule 21 and the WDAT even after there is a final decision in Rulemaking 11-09-011,[12] the Final Decision clarified that such was not the intent:

> We anticipate that generators will find Rule 21, as revised in R.11-09-011, sufficient to meet the statutory mandate of expedited interconnection and, *at that point, we will no longer permit interconnection under the federal tariffs*.[13]

In making this clarification, the Decision, however, failed to address the situation in which a developer has already commenced the WDAT process, and is moving through its various steps, when the Commission makes a final determination in R.11-09-01 -- an issue which SEIA raised early in the proceeding. In this regard, SEIA argued that such projects should be

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11 Proposed Decision at p. 91.

12 *See, e.g.*, Southern California Edison Company's Comments on Proposed Decision Revising Fee-In tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 80, Senate Bill, 32 and Senate Bill 2 1X, R. 11-05-005 (April 9, 2012) at p. 20.

13 Decision at p. 92.

"grandfathered in" rather than having to stop the WDAT process and commence interconnection procedures again under Rule 21.[14] SEIA requests that the Decision be modified to this effect.

As noted above, the Decision allows generators the option of selecting the Rule 21 process or the WDAT process until a final decision in R. 11-09-011 regarding the Rule 21 process is made. A generator which chooses the WDAT process and commences go through the steps thereunder should not then be disadvantaged by having to start the interconnection process over again should the Commission reach a final determination in R. 11-09-011 prior to the generator completing the WDAT process.

E. A Seller Concentration Limit is Unnecessary

With very little discussion, the Decision adopts a seller concentration limit of 10 MW per seller.[15] The only rationale provided for such determination is "the limited number of MWs available for the program."[16] SEIA is assuming that the Commission's concern is absent such cap, and given the limited number of MW available, a single counterparty could effectively take up the entire program cap, or even an individual IOU's cap, by executing multiple form contracts. Given that the Feed-in-Tariff program is limited to project projects 3 MW or less and is divided into three distinct product categories with differing technologies,[17] it seems highly unlikely that a single counterparty or even several such counterparties could execute a sufficient

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14 The Solar Alliance Comments on October 13, 2011 Renewable FIT Staff Proposal, R. 11-05-005 (November 2, 2011) at p. 11.

15 The Decision does not state whether the 10MW cap is 10 MW statewide or 10 MW per IOU service territory. In the draft Re-Mat tariffs submitted by the IOUs on July 18, 2012, it appears that the IOUs are interpreting it in a per service territory fashion. SEIA requests clarification that such was indeed the Commission's intent.

16 Decision at p. 7. It should also be noted that the seller concentration limit was not part of the Proposed Decision thus affording parties no opportunity to comment thereon.

17 Differing technologies will attract different sellers. For example it is unlikely that one seller would seek a contract for both a solar project (peaking as-available product) and a biogas project (baseline product)

number of contracts such that it would take up the entire program cap, or even one IOU's allocated portion of that cap. If, however, such did become a problem, the IOU could file an advice letter seeking a tariff change and imposing a seller concentration limit in its respective service territory. Accordingly, SEIA requests that the seller concentration limit be removed from the program criteria.

Should, however, the Commission still believe that the limited number of program MW necessitate a seller concentration limit, such limit should be applicable to the initial MW allocation. If, for example, additional MW are added to a product category (*e.g.*, through reallocation of MW from one product category to another or additional MW resulting from the termination of an AB 1969 contract),[18] then the seller concentration limit should not be applicable to those MW. As these additional MW were not part of the Commission's consideration when it determined a seller concentration limit was necessary, as a matter of course, they should not be subject to the limit.

III. CONCLUSION

For the reasons above stated, SEIA requests that Decision 12-05-035 be modified to effect the changes set forth herein.[19] In addition, SEIA requests that the Commission render a Decision on this petition for modification in coordination with its Decision on the IOUs' proposed PPA and associated tariffs for the SB 32 program, so that there is clarity in the industry as to how the program will be implemented prior to its actual commencement.

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[18] *See* discussion at Section II. A.2, *supra*

[19] Appended to this petition our recommended changes to the Findings of Facts and Conclusions of Law in Decision 12-05-035 necessary to effect the modifications requested herein.

Respectfully submitted this 31st day of July, 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 SEIA for that reason. I have read the attached "Petition of the Solar Energy Industries Association for Modification of 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 31st day of July, 2012, at San Francisco, California.

/s/ Jeanne B. Armstrong
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3326/011/X143179.v1

ATTACHMENT

Proposed Changes to Text, Findings of Fact and Conclusions of Law of Decision 12-05-035

6.4 Re-MAT Price Adjustment Mechanism For Each Product Type

We also adopt a price adjustment mechanism for the three product types, i.e., baseload, peaking as-available, and non-peaking as-available. A proposal for triggering a price adjustment was included as part of SCE's August 5, 2011 comments, and we adopt SCE's proposal, in part. Under the adopted price adjustment mechanism, the price for a utility's product type may increase or decrease every ~~two~~ months ~~-~~provided certain conditions exist. Each utility will make the FiT prices publicly available on its website by the first business day of the month in which the price adjustment occurs.

A price adjustment mechanism will enable the FiT price to quickly respond to market conditions. It is also designed to prevent gaming by only increasing or decreasing provided that a defined level of market interest exists for a product type.

As part of today's decision, interested generators that meet the program's minimum project viability criteria (Section 10) must submit a program participation request form to the utility. Once the participation request form is deemed complete, the utility will establish a queue on a first-come-first-served basis for each product type. To the extent that more than one program participation form for the same type of product is "deemed complete" on the same day, then the project that is ranked earlier in the interconnection queue should receive the priority position in the IOU's Re-MAT queue. Every ~~two~~ months~~,~~ the utility will offer generators a FiT contract at that ~~two-~~month's Re-MAT price in order of the Re-MAT queue. A generator can accept or reject the price. If a generator accepts the price, it enters into a FiT contract. The price is fixed for the term of contract. If the generator declines a contract at that price, it maintains its position in the queue until the next ~~two-~~month ~~period~~.

The price adjustment will be triggered only after least five eligible projects by different developers are in the queue. If there are less than five projects by different developers for any ~~two-~~month offering, then the Re-MAT price remains the same for the next ~~two-~~months. If at least five eligible projects by different developers are in the queue, the price may increase or decrease based on whether projects accept the Re-MAT price and a certain subscription level is met. If no developer enters into a FiT contract at the ~~two-~~month price, then a price increase will

be triggered for the following ~~two-~~month period. Or, if the threshold of five eligible projects with different sponsors is achieved and the all available capacity is subscribed for in a product type, a price decrease is triggered for the following ~~two-~~month period.[1]

6.5 Assignment of Capacity to Three Products Incremental Release of Capacity and Three-MW Minimum to Start
(discussion at p. 49)

In addition to allocating the program capacity among the three utilities, as discussed in Section 12.3, we direct utilities to assign an equal portion of this allocated capacity to three product types over ~~24–~~12 months, i.e., baseload, peaking as-available, and non-peaking as-available. Any ~~remaining~~ unsubscribed capacity at the end of a ~~two-~~month ~~period is~~ will be carried forward to the next month. ~~reallocated to the end of the 24 months, starting with a new period, Months 25-26. The MW should be spread out among Months 25-26 and further in a manner that reflects the initial allocations across Months 1-24.~~ If, after 12 months there are any unsubscribed MW in a product type, it may be reallocated to another product type which has an existing queue. We adopt this design in an effort to both stimulate the market for small renewable distributed generation by providing an adequate supply of available capacity to each product type in response to demand and ensure compliance with the first-come-first serve statutory requirements.

To implement this directive, each utility must divide the total program capacity by ~~24~~12 and then assign one-third into each product type. In awarding contracts for any month , if the next project in the queue is sized such that it would result in the IOU exceeding its monthly allocation (i.e., only 1 MW remains in the monthly allocation, but the next project in the queue is 2 MW), the IOU may procure above the monthly allocation to account for the actual size of the next project in the queue. The amount by which the project exceeds the monthly MW allocation should not be subtracted from the next bi-monthly allocation, but rather reconciled in either the last-mostly period of the initial 12 month program, or in months 13-14, if applicable.

Each utility is directed to publicly notice the amount of capacity remaining in each product type on its website by the first business day of each ~~two-~~month ~~period~~.

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[1] Corresponding changes would need to be made to Sections 6.4.1 and 6.4.2 to effect the change from a bi-monthly program period to a monthly period.

This overall plan to allow IOUs to propose reallocation of capacity over ~~24~~ 12 months (or perhaps further) is designed to minimize ratepayer exposure to a large number of non-competitively priced contracts while ensuring that some capacity is available for each product type, for which there is market interest.

9. ~~Eliminate Overlap of the Commission's RAM Program and § 399.20 Program~~

~~As discussed in more detail below, any overlap between the RAM Program adopted in D.10-12-048 and the § 399.20 FiT Program is eliminated. Under D.07-07-027, Commission's § 399.20 FiT Program has, until today, only applied to facilities up to 1.5 MW. However, this decision increases the size of the eligible facilities under the FiT Program to 3 MW. The RAM Program, as adopted in D.10-12-048, applies to renewable generation from 1 MW to 20 MW. Therefore, unless today's decision modifies the RAM Program, these two programs will overlap for projects 3 MW and under.~~

~~Some parties, including SCE and TURN, expressed concern regarding the overlap of these two renewable programs and the potential for gaming of the price of the two programs for projects of 3 MW and under. For example, as SCE points out, a bidder in the RAM Program who is eligible under § 399.20 would never bid below the FiT price because it knows it could go back to the FiT Program and receive that price. Moreover, a bidder would have more ability to inflate a bid in the RAM Program because it would be able to fall back to the FiT Program.~~

~~We find that the most effective means of preventing potential gaming is to 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. This approach was recommended by SCE and TURN. This restriction will also eliminate a duplicative procurement mechanism for these small renewable generators. The potential duplication would also increase administrative burdens and complicate the implementation process for program participants and the Commission.~~

~~Accordingly, within 90 days of the effective date of this decision, PG&E, SCE, and SDG&E shall file a Tier 1 Advice Letter restricting RAM to generators with a nameplate capacity of greater than 3 MW. This change will not affect the upcoming RAM auction scheduled to close in May 2012 but will take effect in time for the third RAM auction scheduled for the end of 2012.~~

10. Project Viability Criteria for § 399.20 Feed-In Tariff Program (discussion at p.70)

…This decision does not adopts a seller concentration limit. ~~of 10 MW per seller because of the limited number of MWs available for the program. The definition of seller should be further explored in the standard contract phase of this proceeding.~~ We ~~also~~ envision the other program requirements, such as "strategically located" and the three product types, which are discussed elsewhere in this decision, to encourage a diversity of sellers and technologies in the program.

12.1 Program Cap of 750 MW (discussion on p. 77)

….Various parties, including Vote Solar Initiative and FuelCell Energy, raise issues related to the treatment of projects that are already under contract in the existing AB 1969 program. We find that all capacity already under contract from the existing § 399.20 FiT Program must be subtracted from each utility's total capacity allocation. If a contract is terminated at a future date, then the utility is obligated to re-contract for that capacity. Any MW which are made available to the Re-MAT program as a result of the termination of an AB 1969 contract shall be immediately added to the amount of MW available during the first 24 months of the Re-MAT program.

20. Expedited Interconnection Procedures (discussion on p. 100)

…..As stated above, we acknowledge that expedited interconnection is critical to the success of the § 399.20 FiT Program. These issues are scheduled to be addressed in R.11-09-011. However, until the Commission makes a final determination in R.11-09-011 revisions to Tariff Rule 21 that may provide a more expedited interconnection process to participants in this Program, utilities shall allow generators to choose which interconnection processes to use, either the process set forth in the Rule 21 Tariff or the WDAT. Moreover, to ensure that a generator which chooses the WDAT process and commences the steps thereunder is not disadvantaged should the Commission render its final determination in R. 11-09-011 prior to its conclusion of such process, any generator which has commenced the FERC interconnection process prior to

the final determination n R. 11-0-9011 will be afforded the option of completing that process and not having to recommence the interconnection process under Tariff Rule 21. We direct this choice since the utilities follow different internal processes regarding which interconnection procedure is allowed for different renewable energy programs. By allowing generators to choose the process, generators will be able to evaluate which interconnection procedure better addresses their specific needs.

Findings of Fact

23. The statute allows for first-come-first-served on a product specific basis as it specifically directs the Commission to consider the value of different electricity products including baseload, peaking, and as-available electricity in § 399.20(d), provided that after the initial 12 months of the program, any unsubscribed MW in a product type may be reallocated to another product type which has an existing queue.

26. ~~Unless today's decision modifies the RAM Program, the RAM Program and the FiT Program will overlap for projects 3 MW and under and the potential for gaming of the price of the two programs for projects of 3 MW and under will exist.~~

Conclusions of Law

25. A ~~two-~~monthly price adjustment mechanism for each product type should be adopted. The price may increase or decrease from the prior ~~two~~ month's price by increasing or decreasing amounts, depending on the subscription results in each product type for each utility.

28. Utilities should incrementally release a portion of their total program capacity allocation each ~~two~~ months ~~for a 24-~~ 12-month period, provided that an IOU should be allowed to procure above the monthly allocation to account for the actual size of the next project in the queue that would fulfill (and then exceed) the stated allocation by product type.

29. Utilities should reassign unsubscribed capacity to another product type which has an existing queue MW. ~~the same product types~~ starting with Months 13-14. ~~25-26 and beyond to prevent gaming, minimize ratepayer exposure to excessively high contract prices, and efficiently manage allocated unsubscribed capacity~~.

35. ~~To effectively prevent potential gaming, generators with a nameplate capacity of 3 MW and under that meet other eligibility criteria for the FiT Program should be prohibited from participating in the RAM Program if the capacity for the relevant FiT product type has not yet been reached.~~

49. This decision implements SB 32 pertaining to expedited interconnection by clarifying that parties should rely on the existing provisions of Tariff Rule 21 (rather than those under review in R.11-09-011) until the Commission finalizes its ongoing efforts to refine Tariff Rule 21 and expedited interconnection in R.11-09-011. Until the Commission makes a final determination in R.11-09-011, utilities should also allow generators to choose which interconnection processes to use, either the process set forth in Tariff Rule 21 or the FERC interconnection procedures, with any generator which had commenced the FERC interconnection process prior to the final determination n R. 11-0-9011 being afforded the option of completing that process and not having to recommence the interconnection process under Tariff Rule 21.