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 THE REVISED PROPOSED DRAFT TARIFFS FOR THE SECTION 399.20 FEED-IN TARIFF PROGRAM

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January 25, 2013

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In accord with the January 5, 2013, E-mail Ruling of Presiding Administrative Law Judge DeAngelis, the Solar Energy Industries Association (SEIA)[1] comments on the Revised Proposed Tariffs for the Section 399.20 Feed-In Tariff program (SB 32 Tariffs) submitted by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) (jointly, the "IOUs") on January 18, 2013.

I. INTRODUCTION

The IOUs initially filed their proposed SB 32 Tariffs in July, 2012. In providing comments thereon, SEIA was mindful of two overarching tenets behind the Feed-in-Tariff program: (1) to encourage electrical generation from small distributed generation that qualifies as "eligible renewable energy resources under the RPS Program, with an effective capacity of less than 3 MW"; and (2) to provide "a simple and streamlined mechanism for certain generators to sell electricity to the utility without complex negotiations and delays."[2] Accordingly, SEIA's comments focused on the tariff provisions that have the potential for erecting barriers to

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[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.

[2] *See* Decision 07-07-027 at p. 1.

participation by small generators in the program, including lack of cohesiveness between the three IOUs tariffs which might lend itself to market confusion. [3] Indeed, the ALJ recognized the need for such cohesiveness when she instructed the IOUs "to take into consideration the comments filed previously on these tariffs *when developing revised uniform language*."[4] In their revised filings, the IOUs have made certain changes in an effort to achieve uniformity in the Re-MAT programs to be implemented by each IOU. SEIA acknowledges and appreciates those efforts, but as detailed below, the previous lack of cohesiveness among the IOUs was not the only potential barrier to robust participation, and thus assurance that the program MW get to market in a reasonably expeditious fashion -- as was the legislative intent behind the program. SEIA requests that the Commission keep this perspective in mind when reviewing its comments, and, accordingly, adopt the proposed modifications to the IOUs' tariffs recommended by SEIA herein.

II. COMMENTS ON REVISED DRAFT TARIFFS

A. Tariff Effective Date and Program Startup Period

In its August comments, SEIA noted that each IOU had selected a different program effective date. In this regard, SEIA submitted that having different program start dates in each of the IOUs' service territories is unnecessary and will only result in confusion in the marketplace.[5] In their revised draft tariffs, the IOUs have adopted a uniform program effective date and associated time periods for submission of program participation requests (PPR). SEIA appreciates the IOUs acknowledgement that as a statewide, legislatively mandated program there

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[3] Comments of the Solar Energy Industries Association on the Third Revised Proposed Standard Form Contract and the R Proposed Draft Tariffs for the Section 399.20 Feed-in-Tariff Program, R. 11-05-005 (August 15, 2012) (August Comments).

[4] January 5, 2013 E-Mail Ruling of ALJ DeAngelis.

[5] August Comments at pp. 2-3.

should be one effective date - not three - for the Re-MAT program. That said, SEIA notes that the effective date which the IOUs have chosen, coupled with the proposed protocol for submission of PPRs, will result in an unnecessary delay to the launch of the program.

Specifically, the IOUs request that the effective date be no earlier than the date that the Commission's approval of the Re-MAT tariff is final and non-appealable. In other words, the effective date would be no earlier than 30 days after the Commission issues its decision approving the Re-Mat tariffs. Then, applicants will be precluded from submitting PPRs until the first business day of the month that is no earlier than sixty days after the effective date. At this point, it is a minimum of 90 days after Commission issuance of a Decision, and potentially closer to 120 days before PPRs are submitted. Finally, the IOUs propose that the first program period will begin on the first business day of the month that is no earlier than sixty days after the initial PPR submission date. At this juncture, it is a minimum of 150 days after the Commission's issuance of a Decision, and may be closer to 200 days -- *i.e.,* six and one half months - from a Commission Decision approving the tariffs before any MW are awarded under the program. There is no justification for such a protracted startup period. The industry has been awaiting this program for an extended period of time. Potential applicants know what will be required in a PPR and the IOUs, which have been running AB 1969 feed-in-tariff programs for the past few years, have the infrastructure in place to process the PPRs. The Commission should impose a more reasoned start-up period, *e.g.,* three months from a Commission Decision.

B. Project Eligibility -- Criteria Seller Concentration Limit

Decision 12-05-035 provided for a seller concentration limit of 10 MW per seller and states that "[t]he definition of seller should be further explored in the standard contract phase of this proceeding." The IOUs sought to address this issue by requiring that the Applicant provide

an attestation that includes the percentage interest the Applicant and Applicant's Affiliates have in each project related to an executed Re-MAT PPA or a submitted Re-MAT PPR .

In its August Comments, SEIA noted that, given the variety of means in which a project can be structured, a significant number of questions still remained as to how the concentration limit would be calculated.[6] In response to SEIA's concerns, the IOUs have revised their proposed tariffs to provide some additional clarification stating that "the determination of the percentage of ownership or 'sponsor equity' of an Applicant in a Project will be made by the Applicant, based on project financing conventions and/or accounting standards."[7] The Applicant must provide the IOU an attestation as to ownership percentage based on such determinations. While SEIA appreciates the IOUs attempts to move this issue forward, uncertainty still remains.

The problem rests with the fact that the seller concentration limit is premised on the "Applicant's" interest in Re-MAT project(s), but the term Applicant has not been clearly defined and could mean something different in varying circumstances. For example, under a Sales Leaseback PPA, the entity that executes the PPA would be the financier/ Special Purpose Entity (SPE). If the SPE is considered the "Applicant," then the 10 percent seller concentration limit would not be an issue because such entities are generally formed to address a specific project. However, if a specific financier *(e.g.*, Wells Fargo) is deemed an Applicant, then the "Seller Concentration" clause becomes a substantial limitation. The fact is that the Commission adopted the seller concentration limit of 10 MW per seller with minimal discussion.[8] The

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6 August comments at p. 4.

7 *See, e.g.*, PG&E Revised Proposed Tariff at Section D. 11.

8 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

Commission did not consider the potential implications given the variety of financing constructs which are used to finance and build projects. Such uncertainty is a significant market barrier. It was due to the creation of such market barriers that SEIA , in its Petition for Modification, has sought elimination of the seller concentration limit. If the Commission, however, determines that such a limit should be retained it must provide more clarity, giving the IOUs specific guidance as to its implementation, and thus the industry the necessary knowledge as to how the limit will be applied.

Finally, SEIA notes that the IOUs intend to rely upon the Applicant's attestation as to percentage ownership of Re-MAT projects. The IOUs have stated that they shall have the right to request and review the Applicant's ownership calculations and supporting documentation. In order to provide further clarity, the IOUs should be required to submit as part of their tariffs a pro forma attestation.

C. Queue Ranking

In its August Comments, SEIA took issue with the IOUs' proposed manner of placing projects in the program queue -- namely the IOUs' tariffs provide that if multiple PPRs are deemed complete on the same day, then their respective positions in the queue will be based on the date *and time* at which their PPRs were received by the IOU.[9] SEIA submitted that in such a situation a criterion more substantive than a time stamp should factor into queue rank, and recommended that the applicant's place in the interconnection queue be used.[10] The IOUs

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that the IOUs are interpreting it in a per service territory fashion. SEIA requests clarification that such was indeed the Commission's intent.

9 August Comments at p. 6.

10 *Id.*

voiced their disagreement in their reply comments[11] and did not make any changes to the queue ranking protocol in their revised proposed tariffs. SEIA continues to submit that something more substantive that "pushing the button first" should be used to determine queue ranking. SEIA notes that this issue was also raised by SEIA in its Petition for Modification of Decision 12-05-035.[12] SEIA request that this issue, along with the remainder of the issues raised in its Petition be resolved concurrently with the Commission's action on the IOUS' proposed tariffs.

C. Allocation of Program MW

In its August Comments, SEIA noted that in accounting for the allocation of program MW in each bi-monthly period, that the IOUs were proposing that if the contract capacity of the next applicant, in queue number order, for a product type is larger than the remaining bi-monthly product type allocation, the bi-monthly product type allocation will be deemed to be fully subscribed. In other words, the next project in the queue will not be awarded a contract. SEIA asserted that the only thing accomplished by such protocol was the unnecessary delay in the interconnection of renewable projects. Accordingly, SEIA proposed that the IOUs should be directed to procure above the bi-monthly product allocation to account for the actual size of the next project in the queue that would fulfill (and then exceed) that allocation. The IOUs again voiced disagreement in their reply comments, primarily noting that such over-procuring in bi-monthly periods will reduce or possibly eliminate the capacity available in future bi-monthly periods,[13] and made no change to the allocation protocol. While SEIA agrees that a change in

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11 *See* Pacific Gas and Electric Company's Reply Comments on Proposed Electric Schedule E-REMAT Tariff for the Section 399.20 Feed-In Tariff Program, R. 11-05-005 (September 10, 2012) at pp. 4-5; Southern California Edison Company Reply Comments on Draft Tariffs for the Section 399.20 Feed-In Tariff Program, R. 11-05-005 (September 10, 2012) at pp. 4-5.

12 Petition of the Solar Energy Industries Association for Modification of Decision 12-05-035, R. 11-05-005 (July 31, 2012) (Petition) at pp. 7-8.

13 *See, e.g.,* PG&E Reply Comments at pp. 4-5.

the protocol may result in earlier depletion of the program MWs, such is not adequate basis to keep the MWs from the market. SEIA notes that this issue was also raised by SEIA in its Petition for Modification of Decision 12-05-035.[14] Again, SEIA request that this issue, along with the remainder of the issues raised in its Petition be resolved concurrently with the Commission's action on the IOUS' proposed tariffs.

D. Reallocation of Terminated Contracts MW

In their revised tariffs, all IOUs uniformly address an issue which had previously only been addressed by PG&E -- how MW associated with either AB 1969 contracts or Re-MAT contracts which are terminated will be added back into the bi-monthly allocation. PG&E had proposed that any capacity associated with such contracts which are terminated during the initial 12 months of the program will "be allocated by PG&E to one or more Product Types and Bi-Monthly Program Periods during the *Second Program Phase.*" PG&E further proposed that any capacity associated with such contracts "that [is]terminated during the Second Program Phase will not be re-allocated." SEIA protested both of these proposals as being inconsistent with the Commission approved Re-Mat program.[15]

PG&E has now modified its tariff provision to provide that all MWs associated with either AB 1969 contracts or Re-MAT contracts terminated prior to the end of the initial program period will be allocated back to the applicable product type during the initial program period if that product type for any bi-monthly period has less than the Initial Allocation which was made for the first bi-monthly period (or the 3MW minimum). If that situation does not occur then it will be allocated to the second 12-month program period. SCE and SDG&E propose a similar protocol. While SEIA appreciates the movement by PG&E (and the other IOUs) on this issue,

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[14] Petition at pp. 4-5.

[15] August Comments at p. 10.

SEIA continues to submit that there is no overriding basis for the IOUs to limit the number of MW available to the program during the initial program period. The fact is that if the MW had not been under contract as part of an IOU's AB 1969 program or subsequent Re-MAT program, then all those MW (not a limited amount as proposed by the IOUs) would have been available for allocation to a viable project during the initial 12 month period. Given the limited number of MW which will be available under the Re-Mat program, and the extremely small number which will be available during each bi-monthly period, the Commission should not allow the IOUs to withhold the MW from the market for what could be over a year (from the initial to the second program phase).

Finally, as mentioned above, each of the IOUs tariffs provide that MWs associated with AB 1969 or Re-MAT contracts that are terminated during the RE-MAT's second program period will not be reallocated.[16] In its August Comments, SEIA noted that such provisions are contrary to program requirements. Specifically Decision 12-05-035 provides that "If a contract is terminated at a future date, then the utility is obligated to re-contract for that capacity."[17] These provisions must be stricken from the IOUs' tariffs.

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16 *See* PG&E Draft Tariff, Section G. 4; SCE Draft Tariff, Section G.5; SDG&E Draft Tariff, Section G.5 .

17 Decision 12-05-035 at p. 77.

III. CONCLUSION

For the reasons set forth herein, SEIA respectfully requests that the Commission direct the IOUs to make the recommended changes to their respective Re-MAT tariffs.

Respectfully submitted this 25th day of January, 2013, 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 "Comments of the Solar Energy Industries Association on the Revised Proposed Draft Tariffs for the Section 399.20 Feed-In Tariff Program." 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 25th day of January, 2013, at San Francisco, California.

/s/ Jeanne B. Armstrong
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