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)

THE DIVISION OF RATEPAYER ADVOCATES' OPENING COMMENTS ON THE PROPOSED DECISION AND ALTERNATE DECISION ADOPTING JOINT STANDARD CONTRACT FOR SECTION 399.20 FEED-IN TARIFF PROGRAM AND GRANTING, IN PART, PETITIONS FOR MODIFICATION OF DECISION 12-05-035

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I. INTRODUCTION

Pursuant to California Public Utilities Commission (Commission) Rules of Practice and Procedure 14.3, the Division of Ratepayer Advocates (DRA) respectfully submits the following opening comments on the *Proposed Decision of Administrative Law Judge DeAngelis Adopting Joint Standard Contract for Section 399.20 Feed-In Tariff Program Program (PD) and the Alternate Proposed Decision of Commissioner Ferron (APD).*

DRA generally supports the PD, which would direct Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E)[1] to revise their Feed-in Tariff (FiT) programs to include a streamlined standard contract and revised tariffs, and adopt rules that will result in a more robust market while protecting ratepayers. In contrast to the APD, the PD provides for explicit and appropriate guidance in cases where utilities overprocure or reclassify contracts. DRA recommends the Commission adopt the PD with the following modifications in order to strengthen the FiT program:

- Adopt a price adjustment cap of $12 per period, and
- Refresh the initial Renewable Market Adjusting Tariff (Re-MAT) price using the most recent available data.

II. DISCUSSION

A. The Commission should adopt the PD rather than the APD, as the PD provides explicit and appropriate guidance for cases where IOUs overprocure or reclassify contracts

The PD and APD both order the Utilities to revise their FiT programs to include new streamlined standard contract and revised tariffs, and both reach the same determination of issues raised by Petitions to Modify Decision (D.) 12-05-035. The sole difference between the PD and the APD is that the APD does not determine how the Utilities should request removal of FiT tariff or Assembly Bill (AB) 1969 contracts from the program. The PD observes that,

[1] DRA's comments refer collectively to PG&E, SCE and SDG&E as Utilities or IOUs (investor-owned utilities).

"the issue of how to add megawatts back into the FiT program may also arise[2] if FiT contracts are reclassified under a different program. In other words, the project is still viable but does not meet the eligibility criteria. Therefore, we also take this opportunity to clarify the procedure that IOUs must rely upon should IOUs seek to reclassify the contracts entered into in under this revised FiT tariff or the AB 1969 tariff to a different tariff or program."[3]

In contrast to the APD, which is silent on the correct procedure for seeking reclassification of projects that are reclassified under a different program, the PD specifies that the "IOUs may only request authority to overprocure or reclassify contracts by Commission decision, not by advice letter."[4] DRA supports the PD's specification of the procedure for reclassifying FiT contracts and agrees that a Commission decision in response to a petition for modification, rather than in response to an advice letter filing, is the appropriate procedure for increasing or decreasing the megawatts in the FiT program. A Commission decision in response to a petition for modification would allow the Commission and parties to consider the requested reclassification or overprocurment in "the context of the entire FiT program, including the impact of past legislation, and D.11-11-012 and D.12-05-035."[5]

B. The Commission should modify certain components of the Re-MAT price adjustment mechanism to contain costs and preserve ratepayer value

DRA generally supports the PD and (APD's) responses to various petitions for modifications to D.12-05-035, as well as its proposed changes to the Re-MAT pricing structure for the FiT program. These changes facilitate transparency, market functions, and developer opportunity while providing for cost containment and ratepayer protections.[6] In particular, DRA supports the following components of the Re-MAT pricing structure proposed in the PD and APD:

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[2] Both the PD and the APD grant Solar Energy Industry Association's (SEIA) request to modify D.12-05-035 by adding megawatts from terminated programs to the total megawatts available to each IOU. PD, pp. 16,18; APD pp. 16-17.

[3] PD, p. 17.

[4] PD, Finding of Fact 59, p. 79.

[5] PD, p. 18.

[6] D.12-05-035, p. 108. Finding of Fact 1.ii.

- Setting a new price adjustment trigger based on applicant interest to more accurately signal market supply,[7] rather than eligible executed projects adopted in D.12-05-035;[8]
- Limiting subscriptions to the MW offered in a period, thereby limiting ratepayer harm in periods where the Re-MAT price exceeds the market price;[9]
- Retaining D.12-05-035's prohibition on RAM participation, thereby preventing potential gaming between the RAM and FiT programs;[10]
- Declining at this time to change locational adders,[11] redefine strategically located, or add environmental compliance costs to the FiT price, as they are respectively to be addressed later in the proceeding, already defined in D.12-05-035,[12] or implicitly included in the Re-MAT price;[13] and
- Preserving the Collateral Requirements after the Commercial Operation Date established in the July, 18, 2012 draft joint standard contract, to ensure ratepayers will be made whole in case of default.[14]

Although the PD and APD maintain and expand ratepayer protections, DRA recommends that the Commission modify key aspects of the Re-MAT to preserve ratepayer and utility value and address potential shortfalls of the Re-MAT methodology. DRA's recommendations, detailed below, enhance ratepayer protections while easily integrating into the existing Re-MAT framework.

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[7] PD, p. 13.

[8] D.12-05-035, p. 110. Finding of Fact 15.

[9] PD, pp. 18-20.

[10] PD, pp. 21-22.

[11] PD, p 27.

[12] D.12-05-035. Section 6.9, p. 56.

[13] PD, pp. 26-28.

[14] PD, pp. 39-40.

C. The Commission should adopt a $12 cap on period price adjustments in order to guard against several periods of Re-MAT pricing in excess of market prices

In D.12-05-035, the Commission adopted an escalating price adjustment value for each successive period, which would facilitate reaching the approximate market price for several different categories (baseload, peaking as-available, and non-peaking as-available) within a constraint of 12 two-month periods.[15] In short, if a price adjustment were triggered, the first adjustment would be an increase or decrease of $4/MWh. Successive price changes in the same direction would grow larger each period: $12/MWh, $24/MWh, $40/MWh, $60/MWh, and so forth.[16]

The PD would allow the FiT program to continue for an unlimited number of periods until it is fully subscribed, while maintaining the escalating price adjustment.[17] Given the proposed unconstrained time periods for Re-MAT, the escalating price adjustment between periods is no longer necessary. In fact, it appears contrary to the FiT policy guideline of containing costs and ensuring maximum value to the ratepayer and the utility.[18]

In certain cases, as DRA illustrates below, the exponential increase in price adjustment for successive periods can result in a FiT price far exceeding the actual market price for several periods.

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[15] D.12-05-035, pp. 44-48.

[16] The escalating price adjustment starts at $4. Assuming the price adjustment is in the same direction, each successive period's price adjustment amount is based on the previous period's price adjustment, plus the sum of the previous adjustment and $4.

For example, if the initial price of $89.23/MWh increased due to price triggers for several successive periods, the escalating price adjustment would result in successive prices of $93.23/MWh (89.23 + [0 + (0 + 4)]) in the second period, $105.23/MWh (93.23 + [4 + (4 + 4)]) in the third period, $129.23/MWh (105.23 + [12 + (8 + 4)]) in the fourth period, $169.23/MWh (129.23 + [24 + (12 + 4)]) in the fifth period, $229.23/MWh (129.23 + [40 + (16 + 4)]) in the fifth period, and so forth.

If, however, a price adjustment were not triggered or a price adjustment in the opposite direction were triggered, the price adjustment amount would "reset" to $4/MWh, and increase again in successive periods for adjustments of the same direction.

[17] PD, p. 14.

[18] D.12-05-035, p. 108, Finding of Fact 1.ii.; PD, pp. 8-9.

Table 1. Cost and Time to Reach an Illustrative Market Price ($140) Under Different Price Adjustment Schemes

Price Adjustment Scheme	Period	1	2	3	4	5	6	7	8	9	10	11
Per D.12-05-035	Adjustment		4	12	24	40	-4	-12	-24	4	12	-4
	Price*	89	93	105	129	169	165	153	129	133	145	141
With $12 Limit	Adjustment		4	12	12	12	12					
	Price	89	93	105	117	129	141					

*Prices are in $/MWh, and have been rounded to the nearest dollar. Periods in red are significantly over the illustrative market price of $140/MWh.

Assuming that prices stabilize several dollars above the market price, and that the price for a particular category is $140, given the current Re-MAT starting price and price adjustment scheme, it would take 11 periods, or nearly two years, for Re-MAT to reach a stable price, with an annual excessive cost of $5 million dollars[19] for 20 years[20] or $100 million total. With a $24 limit, that point would be reached sooner and at a smaller, yet still significant, excessive annual cost of $1.5 million for 20 years, or a total of $30 million. A $12 limit would reach the market price in minimal time and at minimal excess cost to ratepayers and utilities.

More generally, a $12 limit would eliminate a potential flaw in the PD/APD's revised Re-MAT methodology by minimizing the amount (and associated cost) by which the Re-MAT can overshoot the market price, yet still allow the Re-MAT price to approach the market price in a reasonable amount of time. DRA therefore recommends a maximum price adjustment per period of $12, which provides for ratepayer and utility protections while allowing the FiT program to reasonably function.

[19] Assuming that the four periods in red are fully subscribed at 10 MW each, no Time of Delivery (TOD) adjustment, and a capacity factor of 80% resulting in approximately 70 GWh (or 70,000 MWH) of annual production per 10 MW of generation.

DRA calculated the $5 million by taking the difference between the illustrative market price and periods of excessive Re-MAT price ($29/MWh, $25/MWh, $13/MWh, and $5/MWh) and multiplying those prices by the annual production of 10 MW at an 80% capacity factor (70,000 MWh). The sum is $5.04 million ($2.03 million + $1.75 million + $0.91 million + $0.35 million).

[20] The IOUs draft tariffs submitted July 18, 2012 indicate FiT contract terms may be for 10, 15, or 20 years.

D. The initial Re-MAT price is outdated and should be recalculated using the most recent available data

The current pre-Time of Delivery (TOD) starting price of $89.23/MWh is based on the weighted average of the IOUs' highest executed contracts from the November 2011 RAM auctions.[21] The Commission chose this starting point because there was insufficient information to set a unique starting price for each category, and because this price "is set by the most recent comparable competitive solicitation for renewable distributed generation."[22] More recent RAM data is now available, and DRA recommends the starting price be refreshed with the relevant prices from the latest RAM auctions.

III. CONCLUSION

DRA generally supports the PD, but recommends the Commission adopt the PD with the following modifications and clarifications:

- Place a $12 cap on period price adjustments; and
- Recalculate the initial Re-MAT price using the most recent data.

Respectfully submitted,

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[21] D.12-05-035, p. 110, Finding of Fact 14.

[22] D.12-05-035, p. 43.

VERIFICATION

I, Diana L Lee, am counsel of record for the Division of Ratepayer Advocates in proceeding R.11-05-005, and am authorized to make this verification on the organization's behalf. I have read the

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filed on April 8, 2013. 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 are true and correct.

Executed on April 8, 2013 at San Francisco, California.

/s/ DIANA L. LEE
Diana L. Lee
Staff Counsel

APPENDIX A

DRA's Recommended Changes to the Proposed Decision

(Proposed additions are included with underlines.)

CONCLUSIONS OF LAW

<u>7a. Given the availability of more recent RAM price data, it is reasonable to update the initial Re-MAT using data from the latest RAM auctions.</u>

<u>7b.Given the revision of the FiT program to end when no capacity remains, rather than after a specified 24-month period, it is reasonable to place a $12 cap on price period adjustments.</u>