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 PROPOSED 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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In accord with the Rule 77 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) the Solar Energy Industries Association (SEIA)[1] comments on the Proposed Decision of ALJ DeAngelis Adopting Joint Standard Contract for Section 399.20 Feed-in Tariff Program and Granting, in part, Petitions for Modification of Decision 12-05-035 (Proposed Decision or PD).

I. INTRODUCTION

Implementation of Senate Bill (SB) 32, which modified and expanded the feed-in tariff program originally put into place by AB 1969, has been over four years in the making. As a result, the SB32 program, which was to offer a new potential market for small renewable projects, will have limited MW available. Given this reality, SEIA's comments on the Proposed Decision are very limited, addressing two standard contract terms, the rationale for adoption of which seems misplaced, and the prolonged timeline for receipt of the first program participation requests (PPRs).

[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.

II. STANDARD CONTRACT TERMS

A. Commercial Operation Date (Section 2.8 of PPA)

The Proposed Decision (at p. 37) maintains the 24 month period prior to the Commercial Operation Date (COD) plus a permitted extension of 6 months as originally approved in Decision 12-05-035. In that decision, the Commission determined that such a project viability criterion will assist in ensuring that projects seeking to participate in the FiT Program will come online. SEIA agrees, but has a concern regarding the operation of the six month extension. Specifically Section 2.8.2 of the Proposed PPA states that COD may be extended "on a day to day basis for a cumulative period of not more than six months" for the stated reasons. Coupled with this provision is Section 2.8.3 which provides that "all permitted extensions taken shall be concurrent, rather than cumulative during any overlapping delays." The difficulty with these restrictions on the allowed delay is that it is not unusual for one delay in the process to delay a subsequent step, thus compounding the problem and expanding the time necessary to get the project back on track. For example, delays in obtaining an executed interconnection agreement can cause cascading delays in the permitting and construction process for a project. In some cases the project developer is responsible for obtaining permitting authority for the construction of certain interconnection facilities and upgrades for a project. The interconnection agreement will determine the specifications for those facilities and upgrades, which may be necessary for the permit to be processed. And delays in permitting will delay a project's schedule for construction. A simple day for day extension may not reflect the actual impact to the overall project schedule that is triggered by a delay in one step of the process.

A PPA which provides that all delays add up to no more than six months is overly restrictive and could result in a number of projects defaulting under Section 14 of the PPA.[2] Accordingly SEIA recommends that the Section 2.8.2 be modified in the following manner.

> "2.8.2 Seller shall have demonstrated Commercial Operation by the "Guaranteed Commercial Operation Date," which date shall be no later than the date that is twenty-four (24) months (720 days) after the Execution Date; provided that the Guaranteed Commercial Operation Date may be extended ~~on a day-to-day basis~~ for a ~~cumulative~~ period of ~~not more than~~ six (6) months for the following reasons ("Permitted Extensions"):

In addition, Section 2.8.3 should be stricken in its entirety

B. Compliance Expenditure Cap (Section 4.6 of PPA)

The PD notes SEIA's opposition to the manner in which the proposed compliance expenditure cap is structured with respect to the size of the cap and what types of costs are to be covered by the cap. The PD proceeds, however, to adopt the IOUs' proposed compliance expenditure cap, stating that "the cap of $25,000 [is] a reasonable means of sharing the risk of additional costs that would be potentially incurred with changes in the law."[3] In doing so, the PD characterizes the cap as a "$25,000 cap (for the term of contract)." [4] This, however, is not the case. As set forth in the standard form contract, the $25,000 cap is an *annual* cap.

Moreover, the PD fails to address SEIA's concern regarding the expenditures which are covered by the cap. The concept behind a Compliance Expenditure Cap is to cap the developer's exposure to increased costs as the result of changes in law or regulation subsequent to the execution of the PPA. The Proposed PPA is loaded with various reporting and compliance

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2 Section 14.2.2.2 provides as Seller's event of default that "The Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date."

3 PD at p.44.

4 *Id.* at p. 43.

requirements (*e.g.*, Issuing and Tracking of WREGIS certificates associated with RECS; Obtaining and Maintaining CEC Certification and Verification; EIRP Requirements; Greenhouse Gas Emissions Reporting), while the Compliance Expenditure Cap is only applicable to obtaining and maintaining the necessary CEC certification and verification. The level of the cap -- $25,000 annually- coupled with its minimal application does not affect "a reasonable means of sharing the risk of additional costs that would be potentially incurred with changes in the law" as found by the PD. The PD must be modified to recognize a reduction on the cap[5] and/or a broadening of its applicability to all notice and compliance requirements set forth in the PPA.

C. Insurance (Section 10 of PPA)

In its Comments on the Joint PPA, SEIA noted that, given the size of the projects that can participate in the SB 32 program, the level of insurance which the Joint IOUs were proposing was excessive and could create a financial burden for projects, especially those on the lower end of the project MW range. In this regard, SEIA submitted that, in determining the appropriate level of insurance to require, the Commission should look to insurance provisions in comparable program PPAs, such as SCE's CREST program, which requires only general liability insurance that is graduated depending on the size of the project, but never exceeds $2,000,000. The PD rejects SEIA's argument finding "that the risks to ratepayers throughout the contracting term are sufficiently high to justify the requirements imposed upon sellers by the draft joint standard contract term."[6] The PD's rationale is internally inconsistent.

Specifically, the PD finds with respect to development security:

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5 SEIA recommends, as it did in it earlier submitted comments on the Propose PPA, that the Compliance Expenditures that the Seller is required to bear during the Delivery Term should be capped annually at ten thousand dollars per MW of Contract Capacity and in the aggregate throughout the Delivery Term at twenty thousand dollars per MW of Contract Capacity.

6 PD at p. 51

> In the context of FiT, we most recently addressed the issue of collateral used for development security in D.11-11-012.135 In. D.11-11-012, we modified SCE's then existing CREST contract (SCE's FiT contract under AB 1969). We found then that $20/kW for collateral used for development security in that contract was a reasonable balance between discouraging non-viable projects from participating in the program, while protecting ratepayers in the event projects fail, with providing smaller developers with streamlined access to the program.[7]

The same rationale should apply to insurance. In the context of the CREST program (SCE's FIT program under AB 1969), the Commission has determined that requiring general liability insurance was sufficient. The same should be applicable here.

III. TARIFF PROVISIONS

A. Effective Date of Tariff and Initiation of Program

With respect to the effect date of the IOUs respective FiT tariffs and corresponding initiation of the SB 32 program, the PD states:

> Each IOU is ordered to file a Tier 2 Advice Letter for approval of its FiT tariffs and the joint standard contract, consistent with the terms of this decision, 30 days after the effective date of this decision. Unless the Advice Letter is suspended by the Commission, this Advice Letter (and the attached tariffs and joint standard contract) will become effective 30 days after the filing date of the Tier 2 Advice Letter (Effective Date). This means that the IOUs shall begin accepting PPR for projects on and after the first business day of the month that is 60 days after the Effective Date (unless the Advice Letters are suspended).[8]

The PD then finds that such an implementation schedule " reasonably balance[s] the need for the IOUs to accomplish administrative tasks associated with implementation of the program with Clean Coalition's and SEIA's request to initiate the program as soon as possible."[9] This is simply not the case.

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7 *Id.* at p.53.

8 PD, at pp. 61-62.

9 *Id.* at p. 62.

The effect of the implementation construct set out in the PD is that the IOUs will not begin accepting PPRs until September 1, 2013 (at the earliest) even if a Commission decision is issued in April. There has been no demonstration by the IOUs that such a protracted start-up period is needed. As mentioned above, 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 PD should be modified to provide for an Effective Date 15 days after a Commission Decision *(i.e.*, the IOUs would be required to file the necessary advice letter in 15 days) and the IOUs should begin accepting PRRs the first day of the month immediately following the Effective Date.

IV. CONCLUSION

SEIA respectfully request that the Proposed Decision be modified as set forth above.

Respectfully submitted this 8th day of April, 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 the SEIA for that reason. I have read the attached "Comments of the Solar Energy Industries Association on the Proposed Decision Adopting Joint Standard Contract for Section 399.20 Feed-in Tariff Program and Granting, I n part, Petitions 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 8th day of April, 2013, at San Francisco, California.

/s/ Jeanne B. Armstrong
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