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)

PLACER COUNTY AIR POLLUTION CONTROL DISTRICT REPLY COMMENTS ON PROPOSED DECISION AND ALTERNATE PROPOSED DECISION RELATED TO POWER PURCHASE AGREEMENT CONTRACT TEMPLATE FOR FIT PROGRAM SUBMITTED MARCH 19, 2013

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I. Introduction.

The Placer County Air Pollution Control District ("District") continues with its input related to the contract template with these reply comments that address key concerns from other parties who filed comments on April 8, 2013.

II. The IOU & DRA proposed changes to the pricing mechanism: 5 MW allocations, price caps, randomization of queue numbers within first week of program, and residual MW amounts

a. The 10 MW allocation and alternate price triggers

All of the IOUs and the DRA state that the 10 MW allocation per category would lead to too many projects receiving an inflated price for their energy. One misconception that is consistent within all of the IOU and DRA filings is an assumption that prices will continue to rise unless 100% of the allocation is subscribed. On the contrary, the price *remains static* so long as 50% -99% of the allocation is subscribed, essentially creating equilibrium in the price structure. So, within a 10 MW bucket, if 5 to 9.9 MW are subscribed (or someone indicates a willingness to subscribe) during a period, the price remains static. The price only rises if 4 or less MW are subscribed. This appears to be a perfectly reasonable approach that will not lead to exponential price increases within the FiT program.

i. **SDG&E: percentage of queue accepts price as price trigger**

The District appreciates the SDG&E efforts at looking for an alternative approach, but finds that this approach would significantly undermine the base load category because of the small amount of likely bidders in the queue. Also, because the starting price is based on the RAM that does not take into account a great deal of base load technologies, this methodology would exacerbate an already challenging economic environment for small base load providers.

ii. **PG&E: price rises only if no more than 20% of the MW are allocated**

The District is not opposed to the concept that with the capacity size increase to 10 MW per category should become a modification to the price trigger. The suggestion, however, that the price should only increase if less than 20% is procured (less than 2 MW instead of less than 9.99 MW) is overly restrictive and ignores the fact that the price remains static when between 5 and 9.99 MW is procured. The stated concern is price increase. As such, the District would offer in the alternative that the price could *decrease* after a 90% allocation, instead of 100% allocation, as a meaningful compromise on the issue.

iii. **The DRA**

The District does not agree with the way the DRA has illustrated the way the pricing mechanism works. The District could agree, however, that some price cap could be set, though the District would look to the CPUC to offer some reasonable alternatives, perhaps based on the work that has been done on Solar costs in combination with the currently circulating Black and Veatch report.

b. **The District supports a queue lottery as described by PG&E**

The District supports Section D of the PG&E Comments and concurs that randomizing the queue numbers as described in the Comments would benefit the program.

c. **The District supports the concept that residual amounts of allocation under 1 MW be combined and offered program-wide on a first come, first served basis, but it does not support an end date to the program.**

The District recognizes that if there are amounts less than 1 MW within a product category, that allocation could sit in the category for inordinately long periods of time. The District would agree that if residual amounts of MW are remaining after at least four years of the program, such amounts could be consolidated and offered program wide on a first come, first served basis, or in some other method as determined by the CPUC, if such circumstances arise.

III. Administrative amendments

The District agrees that administrative amendments to the contract that are agreed upon between the buyer and seller do not need to go through the CPUC.

IV. PPA Template Comments

a. **Delays in beginning operation: COD**

The District, BAC, and others who filed during the comment period continue to point out that more time is needed under Section 2.8 of the PPA and request the extension periods be change from six months to twelve months. As mentioned in the BAC filing, in at least two recent projects developed by Phoenix Energy (which is a member of BAC) in Modesto and Merced Counties, PG&E has been unable to provide interconnection for 10 to 11 months

after completion of construction and permitting. These real life examples demonstrate a one year extension period for COD is reasonable.

b. **City of San Diego, BAC and the contract quantity and GEP sections of the PPA**

The District agrees with the concerns raised by the City of San Diego and the Bioenergy Association of California (BAC) about contract quantity and GEP. While we recognize the need for predictability and planning from year to year, only allowing one contract quantity change in what could be a 10, 15 or 20 year contract seems unnecessarily restrictive. In particular, we agree with BAC that changes in onsite demand – especially by public agency developers that have multiple public health and safety responsibilities – should be allowed more than one time in one or two decades. Essentially, the current terms of the PPA functionally exclude excess sales contracts. These types of contracts are based on DG interconnection to the co-located customer's side of the meter. This necessitates that DG production fully serve the co-located customer's load before providing electricity to the IOU's grid; thereby leaving the DG developer's electrical sales subject to the business decisions of the co-located industry which will not typically be made based on the FIT contract.

Allowing more than one quantity change to address changes in onsite demand makes sense for several reasons and does not cause any of the reliability or predictability concerns raised by the utilities. Onsite load is often difficult or impossible to forecast over a long horizon as there are so many factors that affect business growth or contraction, regulatory change, or other outside factors. Also, the utilities would have to supply the increased onsite demand for power whether or not it comes from the onsite generator or other

generators, so the net impact to supply would be the same as long as DG production remains the same. Finally, using distributed generation to meet additional onsite demand should reduce congestion and other transmission challenges.

For all these reasons, we recommend several options to allow additional contract quantity changes that do not trigger supply or transmission challenges, and we support maintaining some kind of performance requirements for DG developers over the life of their contract. Contract quantity changes could be limited to changes in onsite demand rather than a fixed number of changes to preserve performance requirements on the seller. Alternatively, contract quantity changes could be allowed at the same time as the GEP true-up. Finally, contract quantity changes could be allowed every five years so that the number of changes allowed would depend on contract length, which makes sense since contract lengths can vary by a factor of two.

The District notes that further dialogue about the GEP section of the PPA will be needed during the next phase of the proceeding, but asks that in the context of the program as a whole, that the cap on the damages provision be lowered from 75% to 50% as such losses could devastate the industry, but at the same time no estimates of actual damages have been offered by the IOUs.

***c.* Changes to the provision regarding sale of power to other buyers**

The District continues to emphasize the need for changes to Section 5.3.9 in order to prevent sellers from contracting away their right to sell excess energy (above and beyond what they have promised under the PPA) as is permitted under state and federal law. The current wording of the contract would not be interpreted by the IOUs in a way that would

afford the sellers these rights, as evidenced by the fact that IOUs continue to request that any and all facility expansions must be approved by the IOU. While the District could envision a seller arguing that a potential expansion (that keeps the facility within the FiT program) is not covered by the contract because the new equipment would not fall within the definition of "facility", we nevertheless urge the Commission to make changes to this section in the interest of avoiding future conflict on this issue.

The District would point out that this issue is separate and distinct from the issues of contract quantity changes and guaranteed energy production. Whether or not the Commission determines that GEP should be a requirement for participation in the program, those who choose to produce *more* energy than what is committed to the IOU under the PPA, but still are producing less than 3 MW, should not be restricted from doing so.

d. **Modification of facilities**

The District recognizes that the IOUs are unhappy with the choice that the CPUC has made relating to removing the requirement that buyer's must approve changes made at seller's facilities. The primary concern seems to be that either the seller will make changes that make it unable to perform the contract, or changes that would remove it from eligibility for the program. In both cases if the facility makes a choice that puts it at risk of contract violation or out of compliance with the program, there are consequences for such ill advised choices that already exist. These facilities do not need the burden of the micromanagement of the IOUs. If the CPUC is inclined to include a provision like the one suggested by SCE that would add IOU oversight requirements related to 'material terms' of

the contract, the definition of 'material' offered by SCE is too broad. The District would suggest that 'material' be limited to those changes of the facility that would impair its ability to perform under the contract, but does not overly restrict the facility or ask the facility to contract away its rights to provide energy beyond and outside the scope of the terms of the contract.

e. **CalSEIA's comments regarding expenditure cap within Section 4.6**

The District tends to agree with the CalSEIA on the point that $25,000.00 cost per year is not a 'reasonable' amount if one looks at typical annual revenues of a small producer. The District agrees this should be reduced if it is to be an annual cost expected to be absorbed by a small producer.

f. **Transmission costs and termination rights**

The District reiterates the needed between the IOUs and the small power generators within the FiT program. The District recommends 120 days as a more reasonable amount of time before the IOU is given a right to terminate if interconnection issues have not been agreed upon between the parties.

V. Conclusion.

PLACER COUNTY AIR POLLUTION CONTROL DISTRICT respectfully requests the CPUC consider

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these reply comments in determining the PPA template for the FiT program.

DATED: April 15, 2013

Respectfully submitted,

/s/ Christiana Darlington

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VERIFICATION

I am an officer of the non-profit organization herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th of April, 2013, at Auburn, California.

CHRISTIANA DARLINGTON
General Counsel