

**BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

\_\_\_\_\_  
Order Instituting Rulemaking to Continue )  
Implementation and Administration of )  
California Renewables Portfolio Standard )  
Program )  
\_\_\_\_\_

R.11-05-005  
(Filed August 15, 2012)

**COMMENTS OF HENWOOD ASSOCIATES, INC. 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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April 8, 2013

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Henwood Associates, Inc. respectfully submits the following comments regarding 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* ("PD") issued by Administrative Law Judge DeAngelis on March 19, 2013

## **1. Modified FiT Megawatt Allocation Process**

The Proposed Decision<sup>1</sup> proposes a significant change to the ReMat pricing mechanism by increasing the MW offering to 10 megawatts ("MW") for each product type in each bi-monthly program period until all the megawatts for each product type are awarded to generators. We support this change as necessary to meet the requirements of Section 399.20 for reasons described below.

During the period since D12-05-035 was issued we have analyzed the effect of the ReMat mechanism on the non-peaking as-available product type in the PG&E service territory<sup>2</sup>. This analysis indicated that given the quantity of existing projects seeking contracts for this product type in PG&E the limited 3 MW auction mechanism would not meet the requirements of 399.20 to develop a market price considering "*The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.*"<sup>3</sup> This conclusion was based primarily on the fact that a significant backlog of legacy QF projects are coming off contracts in the 2012 - 2020 period and will be seeking new FiT contracts and MWs at a rate greater than the 3MW blocks would accommodate. The proposed increase in rate of MWs offered should alleviate this issue

Our conclusion that the increase in offering size is necessary to meet the requirements of Section 399.20 is also predicated on the Commission providing sufficient MW in the aggregate to clear this backlog of existing projects. Our analysis showed that

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<sup>1</sup> PD Section 4.1

<sup>2</sup> Our analysis, *The ReMat Mechanism: A Look at Prices and New Plants*, is published at [www.henwoodassociates.com/files/REMAT\\_Mechanism.pdf](http://www.henwoodassociates.com/files/REMAT_Mechanism.pdf)

<sup>3</sup> D12-05-035, page 16

as of March 7, 2013 there would be 110.57 MW available to PG&E's 399.20 FiT program. Of this amount 100 MW is attributable to the unused MW allocated to the AB 1969 Public Water and Wastewater Facilities. If the Commission relaxes the criteria currently used by PG&E to control access to the Public Water and Wastewater Agency MW<sup>4</sup>, and allows entities that are not Public Water or Wasterwater Agencies to excute AB 1969 E-PWF contracts, the pool of MW available to the 399.20 FiT program will be reduced. Any reduction in available MWs potentially jeopardizes the ReMat mechanism's ability to meet the requirement of 399.20 with regard to the non-peaking as-available product type where a backlog of existing projects exist.

Consequently, and consistent the Commission's desire to make a workable amount of MWs available to the 399.20 FiT program, we request the Commission adopt the PD's 10MW offering size and reaffirm PG&E's administration of the E-PWF MW allocation.

## **2. FiT Contract - Section 2.8 and 2.9 Commercial Operation Date and Extension**

In the discussion of this issue the PD indicates that no new information has been provided to motivate a change in the six month extension period. In our comments filed August 15, 2012 we noted a limited situation where we believe further permitted delays are warranted and that may not have been considered in the PD. In particular, when the Buyer is also responsible for any distribution system upgrades needed to interconnect a facility, and the Buyer fails to meet its schedule for construction of these upgrades for more than six months, the Permitted Extension should be increased. We think the potential for conflict in these situation is high and we suggest, in the interest of fairness, the PD address this specific topic.

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<sup>4</sup> On April 5, 2013 PG&E filed a *Motion of Pacific Gas and Electric Company (U39-E) for Clarification Regarding Existing Assembly bill 1969 Feed-in-Tariff Program* reviewing their existing criteria regarding E-PWF contract eligibility and noted that a specific entity, which apparently is not a public water or wastewater agency, has request to execute a E-PWF contract.

### **3. FiT Contract - Section 3.5 Contract Term**

The PD indicates that Henwood requested the Commission add a 25-year contract term option. We did not make this request and we request the PD be corrected.

### **4. FiT Contract - Section 3.7 Billing and Payment Terms**

The PD states the Henwood prefers a longer than monthly billing cycle. To the contrary, we believe a monthly billing cycle is both customary and appropriate.

Instead our comments<sup>5</sup> were directed at the FiT contract shifting the settlement function of bill preparation from the utility Buyer, as is now the case under the existing FiT contract as well as many other power purchase agreements, to the Seller. The proposed FiT contract has a complex settlement function including (a) time-of-day and seasonal factors<sup>6</sup>, (b) hourly Delivered Energy limitations<sup>7</sup>, (c) Contract Year energy delivery adjustments<sup>8</sup>, and (d) Guaranteed Energy Production Damages<sup>9</sup>. Shifting this function to Sellers will undoubtedly increase the Sellers' administrative costs. This new approach would also seem to be less efficient, in the FiT context, to have many Sellers duplicated this function rather than three utility Buyers utilizing their existing departments that perform similar computations now.

### **5. FiT Contract - Section 4.3 WREGIS**

This discussion relies on information filed by PG&E and SDG&E regarding their role as QREs<sup>10</sup>. After receiving these comments Henwood contacted PG&E and asked them to correct this filing. On September 12, 2012 PG&E emailed the service list in

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<sup>5</sup> Henwood August 15, 2012 comments at page 6

<sup>6</sup> Contract Sections 3.7.3

<sup>7</sup> Contract Sections 3.6.2

<sup>8</sup> Contract Sections 3.6.3

<sup>9</sup> Contract Sections 12.2

<sup>10</sup> IOUs September 10, 2012 joint comments at 12.

R11-05-005 that *"PG&E and SDG&E would like to correct this section and clarify that although they generally do not serve as the QRE or Account Holder for the Seller's facilities in WREGIS, under PG&E's and SDG&E's current Feed-In Tariff ("FIT") Program exceptions are made for facilities under 1 MW without a California Independent System Operator ("CAISO") meter. In these circumstances, PG&E and SDG&E have offered to serve as the QRE for the Seller"*. Perhaps the PD did not reflect this correction because it was not filed in the docket.

In PG&E's case they are performing the QRE function for 19 FiT projects<sup>11</sup>, including two owned by one of our affiliates, and will be doing so for many years to come. Moreover, PG&E performs this function for a large number of existing renewable QF projects. Thus they currently have, and must maintain, appropriate administrative systems and staff to conduct this function.

For projects that are not participating in the ISO (which acts as the QRE), performing the QRE function will in many cases require the seller to contract with a third party thereby increasing the FiT Sellers' cost over current conditions. Once again, this seems inefficient as compared to leveraging the existing capabilities of the utilities and we request that PG&E and SDG&E be directed to continuing to provide this function where not provided by the CAISO.

## **6. FiT Contract - Section 6.1 CAISO Agreements; Interconnection Agreements; Scheduling**

The PD did not contain a discussion of this FiT contract section regarding comments Henwood filed<sup>12</sup>. In our comments we noted that the new FiT contract required generators in the 500 - 999 kW range to participate in the CAISO. The

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<sup>11</sup> PG&E, Existing Executed Feed-in Tariff Contracts, Current Spreadsheet (Rev 3-18-13) , online projects under 1MW in size.

<sup>12</sup> Henwood August 15, 2012 comments at page 4 regarding CAISO jurisdiction.

currently in-place PG&E FiT contract contains no such requirement **nor does the CAISO require generators in this size range to participate in the CAISO.**

This is a material policy decision that will increase costs and project complexity for this class of generators - changes that are not encouraging distributed generation and will act contrary to the policy goals of the Fit program. In our comments we questioned the need for this shift<sup>13</sup> and the joint IOU reply comments were silent in this regard. Given the lack of any supporting information provided by the joint IOUs on the need for this major change, we respectfully request the PD reject this requirement and direct the FiT Contract to be accordingly modified.

## **7. FiT Contract - Section 10 Insurance Requirements**

We appreciate the PD's consideration of comments regarding insurance levels. To better understand this issue we have reviewed the insurance requirements associated with the 3 - 20 MW RAM program. When the Commission adopted RAM in December 2010, it provide the following direction regarding insurance requirements:

*"However, we allow the IOUs to determine the amounts and the terms and conditions of such insurance. Subject to Commission approval through a resolution, we expect them to take reasonable actions to protect their ratepayers while also promoting the competitive energy market. To this end, we encourage the IOUs to develop "tiered" insurance requirements, as appropriate, to address the circumstances of smaller projects or those using different technologies.<sup>14</sup>"*

In the case of PG&E the resulting RAM contract has a Commercial General Liability requirement of \$3,000,000<sup>15</sup> and specifies that "*Before commencing*

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<sup>13</sup> Henwood August 15, 2012 comments at page 4, workshop discussions of this topic, and our research of the CAISO.

<sup>14</sup> D10-12-048 Decision Adopting the Renewable Auction Mechanism at page 64

<sup>15</sup> PG&E 2011 RAM PPA 9-19-2011 Section10.10(b)

*performance of the Work, Seller shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Seller.<sup>16</sup>"*

The RAM contract goes further and defines Work<sup>17</sup> as "*(a) work or operations performed by a Party or on a Party's behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, ...*". This clearly is not tied to contract execution but rather the commencement of physical activity.

The PD would impose higher insurance limits (\$5 million) earlier in project development (at contract execution) than the requirements on RAM projects which are up to seven (7) times larger than the largest 399.20 FiT projects. For the sake of consistency with the Commission's various programs for procuring renewable resources, and consistency with prior decisions, we request that the PD direct the utilities to seek insurance requirements no more stringent than those used in the RAM program.

Respectfully submitted,

MARK HENWOOD

*/s/ Mark Henwood*

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<sup>16</sup> PG&E 2011 RAM PPA 9-19-2011 Section 10.10(e)(i)

<sup>17</sup> PG&E 2011 RAM PPA 9-19-2011 Section 1.218



## VERIFICATION

I, Mark Henwood, am the CEO of Henwood Associates, Inc., a corporation, and I am authorized to make this verification on its behalf. The statements in the foregoing *COMMENTS OF HENWOOD ASSOCIATES, INC. ON THE PROPOSED DECISION ADOPTING JOINT STANDARD CONTRACT FOR SECTION 399.20 FEED-IN ARIFF PROGRAM AND GRANTING, IN PART, PETITIONS FOR MODIFICATION OF DECISION 12-05-035* have been prepared and read by me and 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 that the foregoing is true and correct and executed on April 8, 2013, at Sacramento, California.

Respectfully submitted,

MARK HENWOOD

*/s/ Mark Henwood* \_\_\_\_\_

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