

**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 May 5, 2011)

COMMENTS OF SIERRA CLUB CALIFORNIA

**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

I. Introduction

Pursuant to Rule 14 of the California Public Utilities Commission “Commission” Rules of Practice and Procedure, Sierra Club California (“Sierra Club”) submits these comments on the Proposed Decision of ALJ Regina DeAngelis and the Alternate Decision of Commissioner Mark Ferron (“Decision”) adopting a joint standard contract for the Section 399.20 feed-in tariff program and granting, in part, Petitions for Modification of Decision 12-05-035. At a high level, Sierra Club looks forward to the approval of the Decision, which signals that the launch of the new Feed-in Tariff program is near. However, Sierra Club maintains significant concerns regarding the program design, including specific standard-form contract terms, which we hope will be monitored and corrected as soon as practicable.

II. Issues Raised in Clean Coalition / CALSEIA Petition for Modification

Modified FiT Megawatt Allocation Process - The modified process for offering the FIT megawatts to increase each offering to 10 MW for each product type per period per utility is an improvement that will expand the pool of projects, and thereby the reliability of a market price resulting from each period. Without this modification, the capacity for each product type and period would be too small to provide a reliable indicator.

Price Increase and Decrease Triggers - The Decision also modifies the triggers for price increase and decrease, so that a price decrease is triggered if the total capacity of the projects for which applicants have indicated that they would be willing to execute a ReMAT PPA is at least 100% of the capacity allocation for that period, and so that a price increase is

triggered if the total capacity of the projects for which applicants have indicated a willingness to execute a ReMAT PPA is less than 50% of the capacity allocation for that period, and that the price will remain unchanged if the total capacity is at least 50% of the capacity allocation for that period but a price increase is not triggered. Sierra Club has previously joined Clean Coalition and other parties in supporting these types of price triggers in the context of a market-readjusting price method. We reiterate concern that this time frame for readjustment will initially slow the program, which has already incurred delays upon delays. We hope that the Commission will act quickly to address any need for correction should the need present itself due to lack of subscriptions.

Total Program Capacity - The Decision does not modify the total available program megawatts to add capacity to the FIT program. Sierra Club is concerned that the small capacity of the new Section 399.20 program is insufficient to reinforce sustained investment and market transformation. We respectfully urge the Commission to request further comment on expanding the capacity of both the Re-MAT and RAM programs.

Commercial Operation Date - The Decision does not modify the commercial operation date (“COD”). While we hope and expect that most projects will complete prior to the 24 months, and 6 month extension period, we note that issues regarding interconnection persist, and that there is the potential for delays beyond the control of the project applicant. The Commission should consider a shorter COD, but with provision for extensions beyond the control of the developer. The Commission should reinforce the goal of utilities and project developers working in partnership to deliver projects well ahead of the COD through further progress in the interconnection proceeding, and in the ongoing monitoring of the Re-MAT program.

III. Reallocation of Capacity at Project Failure or Transfer

The Decision does not address the result when, after an IOU Re-MAT program has reached its capacity, and then subsequently a project in the queue fails by either rescinding the contract or the 30 month COD and extension period lapses. Similarly, the result is unclear if an IOU moves a contract from the Re-MAT program into another procurement authorization. Sierra Club proposes that this new free capacity be allocated into a new bi-monthly period until the capacity is subscribed.

IV. FiT Joint Standard Contract and Power Purchase Agreement

Sierra Club agrees with Clean Coalition that the contract length is unreasonably long and complex. We find that an important goal of a feed-in tariff program is to improve the accessibility of procurement and to expand the market to additional generators who are not as sophisticated at negotiating Power Purchase Agreements (“PPAs”). The proposed contract achieves the important goal of standardization, but does not achieve the simplicity that FiT programs are known for world-wide. We agree with Clean Coalition that the contract is too complex for small developers to interpret and rely on their own. Some small projects will most likely proceed, but we believe that excessive overhead costs will persist as applicants make efforts to understand and comply with the contract. We encourage the Commission to solicit feedback from project developers and consider how to both (1) simplify and redact the contract over time as experience is gained, and (2) develop an interpretation manual that will assist small developers in understanding the contract.

Sierra Club shares the concerns of CALSEIA that a simplified standard contract is particularly needed to facilitate smaller projects under 1 MW. In CALSEIA's example of a 500 kW project, this project is unable to meet the same insurance, telemetry, forecasting, meteorological, and collateral requirements in a way that a 3 MW project can. We urge the Commission to re-consider the reasonableness of each of these terms as applied to projects under 1 MW, and to simplify the contract for specified projects after such a review. While the Commission hosted workshops where the utilities presented overview of the legal implications of the PPA contract terms, these workshops did not provide the opportunity to evaluate the policy merits of specific terms that pose real and disproportionate costs for small projects.

The Commission directed the IOUs to use the standard form contract used to implement Section 399.20 pursuant to AB 1969 as the basis for the Re-MAT PPA. The Commission should require evidence supporting a finding that any of the proposed additional requirements are reasonable. With regard to the insurance requirements, the IOUs have not articulated why a greater level of insurance coverage is necessary or reasonable, and we urge the Commission to reject a requirement for additional insurance beyond that required for the AB 1969 feed-in tariff program.

We appreciate that in response to the comments of SEIA, CALSEIA, Sierra Club, and AECA the Decision allows the seller to pay the buyer a reasonable cost for forecasting service, and request that this provision of the Decision be monitored at the Advice Letter stage to ensure that the fee is reasonable in proportion to the energy generation capacity.¹ The proposed limit of telemetry costs at \$20,000 may also be a reasonable limit for projects over 1 MW if applied to the total of both initial and operating costs.

¹ Decision at 56.

Some other provisions in the PPA, specifically, the monthly reporting requirement, could pose an unreasonable burden on project developers, particularly small projects. We request that the Commission modify this obligation to a quarterly requirement. We likewise are concerned that CEC compliance costs can add up in combination with other costs. The Decision appears to intend for costs up to \$25,000 to be covered by the developer, and costs in excess to be covered by the IOU. As such, the Decision should be clarified so that on page 44 the words “seller’s costs” are replaced with “buyer’s costs.”

V. Conclusion

Sierra Club urges the Commission to closely examine the obligations imposed on projects as they impact projects under 1 MW, particularly insurance and telemetry costs, and also taking into consideration CEC compliance, forecasting, and collateral requirements. Sierra Club looks forward to the ongoing monitoring and improvement of the Re-MAT, to provide streamlined and cost-effective opportunities for developing renewable energy for a range of renewables technologies and project sizes.

Respectfully Submitted,

April 8, 2013

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VERIFICATION

I am the attorney for Sierra Club California and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in this pleading are true.

I declare under penalty of perjury that the matters stated in this pleading are true and correct.

Executed on the **8th day of April, 2013**, at Berkeley, California.

/s/ Andy Katz

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