

**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)

**REPLY 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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April 15, 2013

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In accord with the Rule 77 of the Rules of Practice and Procedure of the California Public Utilities Commission, the Solar Energy Industries Association (SEIA)¹ responds to certain of 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 (PD) which were filed in the above captioned proceeding on April 8, 2013.

I. THE 10 MW PRODUCT ALLOCATION SHOULD BE MAINTAINED

The PD would modify D.12-05-035 to direct IOUs to offer 10 megawatts for each of the three product types in the SB 32 FiT program for each bi-monthly program period until all the available megawatts for that product type falls below 10 megawatts. All three IOUs expressed concerns about this increase, and request that the Commission reduce capacity allocations per product type for each period.² The Commission should reject those requests.

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.

² See Pacific Gas and Electric Company's Comments on the Proposed Decision and Alternate 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, R. 11-05-005 (April 8, 2013) (PG&E Comments) at p.2-3; Southern California Edison Company's Comments on the Proposed Decision and Alternate Proposed Decision Adopting Joint Standard Contract for

SEIA supports the PD's determination that the capacity allocations per product type for each program period adopted in D.12-05-035 may hinder the advancement of the program because it may result in too few megawatts being offered during each bi-monthly program period.³ As noted in the PD, the modification (*i.e.*, increase to 10 MW) was necessary in order to "make a more workable amount of megawatts available during each bi-monthly program period."⁴ Absent such change, more likely than not, one or two projects would use the entire capacity allocation for a product type each program period. Such a miniscule offering does not afford market participants sufficient opportunity; especially as the market has been awaiting this program for four years.

With that said, SEIA recognizes the IOUs' concern that the PD's corresponding to change to the 10 MW per product type allocation - *i.e.*, triggering a price increase unless 5 MW are executed in each program period per product type -- creates a FiT program which may not be market based as it will be difficult for the price to decrease and easy for it to increase.⁵ Accordingly, SEIA would support PG&E's proposal⁶ of keeping the allocation at 10 MW per product type, but the price increase adjustment should not be triggered in the subsequent bi-monthly program period unless the capacity of the projects which applicants have indicated a willingness to execute a ReMAT PPA based upon the applicable contract price for a period is less than twenty percent of the capacity allocation for that period.

Section 399.20 Feed In tariff Program and Granting, In part, Petitions for Modification of Decision 12-05-035, R. 11-05-005 (April 8, 2013) (SCE Comments) at p. 10-11 ; San Diego Gas & Electric Company's Comments 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, R. 11-05-005 (April 8, 2013).

³ Proposed Decision at p. 10-11.

⁴ *Id.*, at p. 12.

⁵ SCE Comments at 11; PG&E Comments at p.2.

⁶ PG&E Comments at p. 3.

II. PROGRAM IMPLEMENTATION PERIOD SHOULD NOT BE LENGTHENED

The IOUs contend that the “FIT Program schedule envisioned in the PD creates significant administrative challenges.”⁷ They assert that the Commission should adjust the schedule so there are at least 60 days between when the IOUs begin accepting program participation requests (PPRs) and the initiation of the first bi-monthly program period “because of the time consuming nature of evaluating multiple program participation requests, particularly at the outset of the Re-MAT program when the IOUs are likely to receive an influx of requests.”⁸ SEIA strongly objects to the IOUs attempt to further prolong the start of a program which has been four years in the making. Arguments about administrative concerns ring hollow as the IOUs already have feed-in-tariff programs in place and thus the necessary infrastructure to process PPRs expeditiously. The Commission should reject the IOUs request for more time. Indeed, as demonstrated in SEIA’s opening comments, the implementation period provided for in the PD is already too protracted.⁹ Thus, SEIA reiterated its request that 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 PPRs the first day of the month immediately following the Effective Date.

III. QUEUE PLACEMENT SHOULD NOT BE DETERMINED BY “LOTTERY”

PG&E believes that there will be an onslaught of PPRs on the first day of the program “and that a first-come first-serve process which assigns queue numbers based on the exact date and time of application may “incentivize applicants to submit incomplete applications on the first

⁷ PG&E Comments at p. 13.

⁸ SCE Comments at p .20.

⁹ 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, R. 11-05-005 (April 8, 2013), at pp. 5-6.

day to ensure their position in the queue.”¹⁰ In order to “remedy” this situation PG&E requests that “applications received within the first five business days should be deemed received at the same time and queue number for those applications should be assigned by lottery or otherwise on a random basis.”¹¹ SEIA agrees with PG&E that utilizing a pure “time stamp” process could incentivize program participants to submit incomplete applications, hindering the IOUs’ administration of the program. However, to institute an entirely random process is in complete contravention of the first-come / first-served principle of the statute. Accordingly, SEIA submits that the Commission should adopt a more structured approach.

Specifically, any projects that were in the previous AB 1969 FiT queue which submit completed PPRs on the first day should retain their relative position from the previous FiT queue. Such process comports with the first-come / first-served aspect of the statute by recognizing that certain projects were, in effect, already in the queue. For projects not in the previous queue that submit on the first day, their queue position would be based on a time-stamp but would follow all previously queued projects with a completed PPR on that first day.

IV. PG&E’S PROPOSAL FOR PROGRAM END DATE SHOULD BE ADOPTED WITH MODIFICATION

PG&E requests that the PD clarify the point at which no more terminated MWs can be made available to applicants.¹² In this regard, PG&E proposes that the FIT Program should terminate no later than twenty four months after the beginning of the program period in which the first product type in the program has zero MW available. SEIA supports PG&E’s proposal, with one modification -- program termination should be on a per product basis. In other words,

¹⁰ PG&E Comment at p. 6.

¹¹ *Id.*

¹² PG&E Comments at p. 4.

for each product type, the program should be held open for two years after that product type reaches zero MW available. Providing a two year period would allow sufficient time for re-contracting the MW from the initial allocation which have fallen out of the program (from each product type) due to contract termination or other reason.

V. DRA'S PROPOSAL FOR STARTING PRICE ADJUSTMENT SHOULD BE REJECTED

DRA, noting that the current pre-Time of Delivery starting price of \$89.23/MWh for the FIT Program is based on the weighted average of the IOUs' highest executed contracts from the November 2011 RAM auctions, argues that because more recent RAM data is now available, the starting price should be refreshed with the relevant prices from the latest RAM auctions.¹³ Because what DRA is suggesting is, in effect, a steep decline in price for this segment of the market, SEIA strongly opposes.

The projects which will participate in the SB 32 FiT Program are in a different market segment than those participating in the RAM. A more relevant comparison would be projects which are currently participating in the AB 1969 FiT program. These projects are receiving the MPR. While SEIA is not attempting to re-litigate the Commission's determination to base the starting price for the SB 32 FiT Program on the weighted average of the IOUs' highest executed contracts from the November 2011 RAM auctions, it should be aware that the 2011 MPR for 20-year contract with start date in 2014 is \$97.56 (2015 is \$101.32). Projects in the first round of the SB 32 FiT Program will likely have a 2015 start date. Thus, in effect, this market segment will be taking a steep pricing cut. Accepting DRA's suggestion would further exacerbate this

¹³ The Division of Ratepayer Advocates' Opening Comments 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, R. 11-05-005 (April 8, 2013), at p.6.

situation and thereby endanger the success of the program. DRA's recommendation should be rejected.

Respectfully submitted this 15th 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 "Reply 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." 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 15th day of April, 2013, at San Francisco, California.

/s/ Jeanne B. Armstrong
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