STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
770 L Street, Suite 1050
Sacramento, CA 95814

June 17, 2008

The Honorable Loni Hancock, Chair
Assembly Committee on Natural Resources
State Capitol, Room 4126
Sacramento, CA 95814

RE: SB 1714 (Negrete McLeod) as amended June 16, 2008- Support with amendments
Status: Assembly Committee on Natural Resources (June 23, 2008)

Dear Chairman Levine:

On May 15, 2008, the Commission voted unanimously to support with amendments SB 1714, which would make changes to the feed-in tariff provisions to encourage the generation of electricity from eligible renewable energy resources at the sites where the electricity will be utilized and in an amount commensurate with a customer's demand for electricity.

Please see the attached analysis for an explanation of the Commission's position.

If you have any questions or wish to discuss this matter further, please do not hesitate to call me at (916) 445-1430.

Sincerely,

ERIN GRIZARD
Legislative Liaison, Office of Governmental Affairs

cc: The Honorable Gloria Negrete McLeod, California State Senate
Members, Assembly Committee on Natural Resources
Lawrence Lingbloom, Chief Consultant
John Kennedy, Assembly Republican Policy Consultant
John Moffatt, Deputy Legislative Secretary, Office of Governor Arnold Schwarzenegger

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

Memorandum

Date: May 6, 2008

To: The Commission
(Meeting of May 15, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1714 (Negrete McLeod) - Renewable electric generation facilities.**
As amended April 22, 2008

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH AMENDMENTS

SUMMARY OF BILL:

This bill would amend Public Utilities Code (P.U. Code) 399.20 to require that the CPUC establish feed-in tariffs of 10, 15, or 20 years be offered for energy generated by a renewable electric generation facility of no more than 1.5 MW.

- **Technology**: The tariffs would be all eligible renewable energy resources. Third party ownership of facilities would be allowed.

- **Price**: The price paid under the feed-in tariff would be a base payment rate at the market price determined by the CPUC, and could be adjusted by the CPUC to reflect any of the following "green" benefits as appropriate:
    - o Benefits from reduced transmission congestion.
    - o Benefits from reduced transmission and distribution grid expansions and upgrades.
    - o Benefits from reducing emissions of greenhouse gases.
    - o Benefits from advancing the use of developing technologies.
    - o The cost of generation utilizing an eligible renewable energy resource.

- **Administration Terms:** This bill would require that the CPUC, in consultation with the Independent System Operator, monitor and examine the impact on the transmission and distribution grid and any effects on ratepayers resulting from electric generation facilities operating pursuant to a tariff or contract approved by the

CPUC pursuant to this bill.

- **Impact on Net Energy Metering and Incentive Programs**: The bill would not allow any customer who has received any ratepayer-funded incentive or net energy metering (NEM) to be eligible for this tariff. A customer who receives service under a tariff or contract pursuant to this bill would not be eligible for any other ratepayer-funded incentives or NEM.

- **Impact on RPS and Resource Adequacy**: Each kilowatt hour of the output shall count toward the utility's RPS annual procurement targets. The actual generating capacity of an electric generating facility shall count toward the utility's Resource Adequacy requirement.

- **Limits**: The feed-in tariff would be capped for investor owned utilities (IOU) at 500 MW statewide.

- **Publicly Owned Utilities:** This bill would also provide that publicly owned utilities (POU) with 75,000 or more customers establish similar feed-in tariffs. The governing board for the POU would set the price, considering the same adjustments listed above. The feed-in tariff would be capped for POUs at 250 MW.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- This bill would require the CPUC to amend its current feed-in tariff to extend it to all eligible renewable energy resources with capacity up to 1.5 MW, at a price set by the CPUC that would include up to five categories of adjustments for "green" energy. Furthermore, all IOUs would be required to offer this tariff, up to a statewide cap of 500 MW, which is 21.6 MW more than the current statewide cap. POUs with 75,000 or more customers would also be required to offer this tariff, up to a statewide cap of 250 MW, which they are currently not required to do.

    - This bill would codifies much of what the CPUC has already done in D.07-07-027, namely to offer a feed-in tariff at the market price referent to all renewable facilities up to 1.5 MW.

        - The one exception is that the CPUC did not yet require SDG&E to offer a feed-in tariff to any customer, but the CPUC is considering doing that in Phase 3 of R.06-05-027.

        - The other exception is that this bill would allow the CPUC to adjust the current tariffs offered to small renewables facilities to incorporate up to five categories of green benefits listed above. California's current feed-in tariff is based on the current market price referent with no adjustments. If the CPUC were to make adjustments to the price (presumably upwards), it would likely make the feed-in tariff more attractive to customers and reflect the additional benefits of renewable generation.

- ➢ This bill would expand the amount of MWs (raises from 250 up to 500) that can subscribe to the tariff, but the Commission would have the discretion to implement it. Currently the law allows for 250 MW from water and wastewater facilities and the Commission voluntarily added an additional 228 MW from non-water and non-wastewater facilities. This code change would lump both kinds of facilities together, but keep the total at 500 MW.

- o This bill would require that "actual" capacity of a facility would count towards the Resource Adequacy requirements. The existing law refers to the "physical" capacity that would likewise count. We recommend removing "actual" or "physical" because neither word is required.

- o This bill would require that POUs offer a feed-in tariff. They are not currently required to do so.

- o This bill would require that the CPUC, along with the Independent System Operator, examine and monitor the impact of the feed-in tariff. This monitoring seems prudent, especially if the feed-in tariff has any significant participation.

SUMMARY OF SUGGESTED AMENDMENTS:

- P.U. Code 399.20(b)(1) should be clarified for those utilities whose proportionate share of the 500 MW based on the ratio of their peak demand is less than 1.5 MW

- P.U. Code 399.20(b)(3) should read: "Is strategically located and interconnected to the grid in a manner that is *considered "deliverable to load" according to the CAISO deliverability assessments."*

- P.U. Code 399.20(g) should be changed to read: "*The capacity of an electric generation facility should count toward the electrical corporation's resource adequacy requirement for purposes of Section 380.*"

- P.U. Code 399.20(e) should read: "Every electrical corporation shall make this tariff available to customers that own and operate an electric generation facility within the service territory, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those electric generation facilities equals *250 megawatts. The commission shall have the option of extending the tariff up to a combined statewide cumulative rated generating capacity of those electric generation facilities equaling 500 megawatts.* An electrical corporation may make the terms of the tariff available to customers in the form of a standard contract subject to commission approval. Each electrical corporation shall only be required to offer service or contracts under this section until that electrical corporation meets its proportionate share of the *250 megawatts* based on the ratio of its peak demand to the total statewide peak demand, *or until that electrical corporation meets its share* *of the combined statewide cumulative rated generating capacity above 250 megawatts, up to 500 megawatts, as determined by the commission."*

- The PU Code 399.20 (d) should be amended to allow the Commission to take into account other variables, if deemed necessary. As written, the Commission has a finite list, and it cannot exercise any discretion during implementation.

DIVISION ANALYSIS (Energy Division):

- This bill would expand the current Small Renewables Feed-In Tariff, established by AB 1969 and implemented at the CPUC by D.07-07-027 (aka "current feed-in tariff"), to all eligible renewable energy resources. The existing tariffs pursuant to P.U. Code Section 399.20 are restricted to publicly-owned water and wastewater facilities for all electrical corporations other than PG&E and SCE.

- Section 1(c) of this bill states that "[s]mall projects of less than four megawatts that are otherwise eligible renewable energy resources may face difficulties in participating in competitive solicitations under the renewables portfolio standard program." And, Section 1(d) of this bill states that "[a] tariff that allows customers of electrical corporations and local publicly owned electric utilities to sell electricity generated by renewable technologies would address these barriers and could assist in the achievement of the renewables portfolio standard and the state's goals for reducing emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006." While it is not known that the RPS program is insufficient for small projects, it is also not logical to state that projects of less than four MW face such difficulties, and create a tariff for facilities only up to 1.5 MW.

- This bill would require the CPUC to determine a base payment rate for every kilowatt hour of electricity generated, and determine adjustments for a number of proposed green benefits. California's current feed-in tariff payment is based on the market price referent, as adjusted by time of delivery. There appears to be no time of delivery adjustments proposed in this bill.

- This bill would set a cap for the feed-in tariff at 500 MW. P.U. Code 399.20, as it is currently written, sets a cap for the feed-in tariff for water and wastewater facilities at 250 MW. The CPUC separately designated a 228.4 MW cap for a feed-in tariff for non-water and –wastewater facilities for PG&E and SCE customers. That designation of MW would not disappear, so adopting this bill would effectively create a statewide cap of 728.4 MW, with most of the allocation in PG&E and SCE service territories. This should be clarified in the bill, but may also need to be addressed directly by the CPUC. The bill as written could inadvertently allow up to 500 MW of feed-in tariff anywhere in the state, which should not be "required" by the legislature, but rather "allowed by the legislature" if approved by the Commission, in consultation with the ISO.

- This bill would require that each IOU make this tariff available until that IOU meets its proportionate share of 500 MW based upon the ratio of its peak demand to the total statewide peak demand to facilities with capacity up to 1.5 MW. Some IOUs' proportionate statewide share will be less than 1.5 MW. This bill should clarify how those utilities will be treated.

- This bill would require that the governing body of a local publicly owned electric utility, which sells electricity at retail, provide a feed-in tariff for excess electricity generated by a renewable electric generation facility, considering a number of green benefit adjustments. California's current feed-in tariff only requires that electrical corporations offer the tariff to an electric generation facility.

- This bill would allow third party ownership of the electric generation facility, stating that neither property nor facility needs to be owned by the customer. The current feed-in tariff and other ratepayer-funded incentive programs tacitly allow third party ownership. However, this would be the first time, to our knowledge, that third party ownership of distributed generation would be explicitly referenced in the P.U. Code.

- This bill would not allow a customer who has received any ratepayer-funded incentive or net energy metering (NEM) to be eligible for this tariff. A customer who receives service under a tariff or contract pursuant to this bill would not be eligible for any other ratepayer-funded incentives or NEM. California's current feed-in tariff likewise disallows simultaneous participation in the tariff and other incentive programs, whether capacity based or energy based.

- This bill would require that an electric generation facility is "strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers." The intent of this language is not clear and should be clarified. A possible clarification could be that the facility is considered "deliverable to load" according to the CAISO deliverability assessments.

- SCE previously petitioned to modify D.07-09-040 to prevent inclusion of the excess sales option. That petition was denied. The deadline has passed for SCE to take that issue to the courts. However, should this bill pass as written, SCE would potentially protest the excess sales option again which would lead to protracted litigation re-arguing an issue that has already been decided by the CPUC. This bill could be clarified to make clear that the tariff is available for both full buy/sell and excess sales options.

PROGRAM BACKGROUND:

- P.U. Code Section 399.20, as currently written, requires that feed-in tariffs be offered by electrical corporations to an electric generation facility, which is owned by a public water or wastewater agency, with an effective capacity up to 1.5 MW. Participants of the tariff pursuant to Section 399.20 are ineligible to receive benefits through ratepayer funded incentive programs.

- Commission decision (D.) 07-09-040 adopts future pricing and policy for qualifying facilities. Qualifying facilities are able to form standard contracts at a set price for power delivery of renewable resources, which essentially mimics a feed-in tariff.

- Pursuant to D.07-07-027 PG&E and SCE are required, and SDG&E is able, to offer tariffs adopted in the implementation of §399.20 for non-water and non–wastewater facilities.

- This bill would require modifications to and expansions to California's current feed-in tariff, which is still under active consideration in R.06-05-027.

- Feed-in tariffs should be dealt with in a comprehensive manner that takes the current P.U. Code Section 399.20, D.07-09-040, CSI and RPS into account.

- Legislation would only be necessary for the proposed changes in pricing, i.e. allowing the CPUC additional flexibility in the ratemaking of the tariff. Other issues should be aligned with the ongoing proceeding that will address expansion of the current feed-in tariff.

LEGISLATIVE HISTORY:

AB 1969 (Yee, Chapter 731, Statutes of 2006) led to implementation of P.U. Code Section 399.20. As aforementioned, this Code Section provides California's only feed-in tariff to date.

AB 1613 (Blakeslee, Chapter 713, Statutes of 2007) authorizes the California Public Utilities Commission (CPUC) to expand net metering and require that utilities buy excess power from CHP systems.

SB1 (Murray, Chapter 132, Statutes of 2006) created the California Solar Initiative program.

The implementation of P.U. Code Section 399.11 the RPS requirement of "generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010".

FISCAL IMPACT:

- An appropriation of $324,860 to the PUC Utilities Reimbursement Account. All work required by this bill would be in addition to the administrative, analytical, and legal work already required by current programs such as the California Solar Initiative and the renewables portfolio standards.

STATUS:

- SB 1714 is awaiting hearing before the Senate Appropriations Committee.

SUPPORT/OPPOSITION:

Support: California Solar Energies Association

Opposition: None on file.

STAFF CONTACTS:

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Date: May 6, 2008