



ANALYSIS

CALIFORNIA PUBLIC UTILITIES COMMISSION

AB 64 (Krekorian & Bass) As Amended March 24, 2009

SUMMARY

This bill would modify the Renewable Portfolio Standard (RPS) program to increase the minimum amount of renewable energy that must be procured by retail sellers and publicly owned utilities to 25% of their retail deliveries by 2015 and 33% by 2020, as well as make other modifications to the RPS program. This bill would also modify the feed in tariff (FiT) program for small scale renewable facilities by, among other things, increasing the size of eligible facilities from 1.5 MW to 5 MW. Finally, this bill would create the Renewable Infrastructure Authority (RIA) to plan, site, and permit, as well as potentially finance, own and operate, renewable generation and transmission facilities.

CPUC POSITION AND SUPPORTING ARGUMENTS

OPPOSE UNLESS AMENDED. The CPUC supports the advancement of the renewable portfolio standard beyond 20% by 2010 towards a goal of 33% by 2020.¹ Indeed, the Commission considers increased procurement from renewable sources to be a critical element of meeting AB 32's emission reduction goals and greening California's power production and consumption. However, the CPUC is concerned that this bill is overly prescriptive and will impede the Commission's ability to react to market conditions in order to support utility compliance while preserving ratepayer cost protections. The Commission would prefer RPS legislation that is simple and flexible. The CPUC will continue to work with the Legislature and the Governor to design a workable statutory framework for advancing RPS.

ANALYSIS

A. Renewable Portfolio Standard (RPS) program (Articles 1 – 5)

This bill would require the implementation of higher RPS targets in 2015 and 2020, and would modify several aspects of program implementation.

¹ In the Energy Action Plan II (2005), the CPUC and CEC called for the examination of a 33% RPS. The CEC, through the 2008 Integrated Energy Policy Report (IEPR) Update, makes various recommendations pertaining to a 33% RPS. The CEC and CPUC supported a greater reliance on renewable energy so that at least 33% of the State's electricity needs are met by renewable resources by 2020 in their October 2008 decision recommending greenhouse gas regulatory strategies for the electric sector.

Increased RPS Targets

This bill would require investor-owned utilities (IOUs), energy service providers (ESPs), and publicly-owned utilities (POUs) to increase their procurement of renewable energy to 25% of retail sales by 2015 and 33% by 2020.

The CPUC supports increasing the RPS beyond 20%, and making the mandate enforceable for publicly-owned utilities as well. However, the Commission remains concerned about mandating hard targets without conducting analysis on the feasibility of attaining the targets, given potential supply, transmission availability, and permitting timelines. The CPUC supports this bill's elimination of the annual 1% incremental target after 2010 because it will allow the CPUC the flexibility to develop and modify intermediate targets, pursuant to its long-term procurement planning process, to keep the utilities on track.

The CPUC strongly encourages the Legislature and Governor to consider building into any statutory framework an opportunity for a mid-course correction. For example, this bill could be amended to require the CPUC to report to the Legislature and Governor before the end of 2015 on the costs and benefits of the RPS program during the five year period of 2010 through 2014. Based on this information, the Legislature and Governor could reassess the viability of proceeding to 33% by 2020 based on actual data from the program.

Eligibility

This bill would modify the definition of "delivered" and "delivery" (proposed PU Code §952(b)) to say "that the electricity is used to serve end-use retail customers located within the state or is simultaneously scheduled to meet anticipated in-state load." The bill deletes the provision that out-of-state eligible renewable energy can be delivered regardless of whether the electricity is generated at a different time from consumption by California end-use customers (existing PR Code §25741(a)).

This change would effectively eliminate the ability of eligible intermittent (e.g. wind and solar) out-of-state renewable energy facilities to participate in the California RPS. The CPUC supports the participation of out-of-state renewable energy in California's RPS program and opposes this modification to existing delivery requirements permitted under PR Code §25741(a).

However, in Article 5 (RECs), this bill would allow out-of-state renewable energy credits (RECs) without a delivery requirement, called "nondeliverable RECs," to count for the RPS program. Additionally, this bill would place a cap on the use of nondeliverable RECs of 10% of RPS procurement requirements. The Commission would prefer to keep current law in place that gives the CPUC the authority to determine the appropriate cap on REC-only transactions. But overall the Commission agrees that out-of-state eligible REC contracts should not have a delivery requirement. This approach takes advantage of the GHG reduction potential of renewables in the Western Region as a whole, mitigates in-state RPS costs, and provides the state more options for reaching its RPS goals.

Existing PU Code section 953(b)(4) requires facilities that do not have their first point of interconnection in California, and that are located outside of the United States, to be "developed and operated in a manner that is as protective of the environment as a similar

facility located in the state.” This provision should also apply to facilities located outside the United States but have their first point of interconnection in California.

Suggested amendment: Add the language from proposed PU Code section 953(b)(4) to 953(a) also in order to be consistent. Without this change, facilities that are located in Mexico, but have their first point of interconnection in California, would not be required to operate in the environmentally-preferable manner prescribed in section 953(b)(4).

Procurement Plan and Contract Evaluation Methodologies

Proposed PU Code section 962 is overly detailed and complex. Rather than prescribe the requirements for renewable energy procurement plans, bid solicitations, contract duration, and the like, the statute should establish the basic framework for procurement planning and evaluation and allow the CPUC to promulgate the details according to experience and market conditions.

For example, proposed PU Code section 962(b)(1) requires a utility’s RPS Procurement Plan to include a methodology for ranking renewable energy projects bid into its solicitation. The language says that the methodology should be proposed “so that each electrical corporation’s total renewables portfolio benefits ratepayers.” This provision is unclear. Under current law (PU Code section 701.1), the Commission is already required to consider ratepayer impacts when evaluating proposed utility Procurement Plans.

Suggested amendment: If the Legislature believes it is necessary to include a statement regarding ratepayer benefits in section 962(b), the CPUC recommends eliminating “so that each electrical corporation’s total renewables portfolio benefits ratepayers” and replacing it with a period followed by: *“This process shall consider, but shall not be limited to, the cost impact of procuring the eligible renewable energy resources on the electrical corporation’s electricity portfolio, system reliability, and the environmental and economic benefits and costs of procuring renewable energy.”*

The CPUC would prefer an RPS statutory construct that allows the CPUC to update RPS rules according to market and regulatory realities that affect renewable energy development. The CPUC would also prefer the flexibility to maintain consistency between IOU RPS Plans and general procurement planning because it will enable the IOUs to understand which renewable energy projects fit their portfolio on the basis of cost, system reliability and environmental quality. This would provide the CPUC with the information necessary to determine whether the cost of the IOU’s proposed RPS procurement is reasonable, if the utility made good faith efforts to procure least-cost best-fit renewables, and whether the utilities should reasonably be held responsible for getting current projects online or if there were market or regulatory barriers that prevented compliance.

Suggested amendment: If the Legislature believes it is necessary to include a statement regarding the viability of projects in section 962(b)(1) and (b)(2)(D), the CPUC recommends replacing the current proposed language with the following: *“This process shall also consider the viability, risk and timing of procuring the eligible renewable energy resource or nondeliverable renewable energy resource.”*

“California supplier”

The CPUC generally supports a Western regional approach to increasing renewable generation, and, as such, is cautious about proposed preferential treatment of in-state renewable energy resources over out-of-state resources. A national RPS program is supported by the new U.S. President, and will likely be adopted by Congress. California, as a renewable-rich state, has the potential to be a renewable energy exporter in the future. The state should be cautious about setting a precedent among its sister states for in-state preferential treatment.

Specifically, the language in proposed PU Code section 962(g) relating to “California supplier” seems to have been gleaned from another PU Code that was specifically written for the Self Generation Incentive Program to provide preference to a California fuel cell manufacturer. This language does not translate well to other renewable resource types. Also, it would be complex, impractical, and inefficient for the CPUC to implement this preference when it is reviewing contracts. If the Legislature decides to move forward with this preference, then it should instead require the utility to incorporate a preference for a “project located in California” (perhaps as an “adder”) as part of its bid evaluation process in proposed PU Code §962(b).

Cost Containment Mechanism

The CPUC is committed to cost containment within the RPS program. Pursuant to PU Code §701.1, the CPUC has an obligation to ensure that the principal goal of electric utilities' resource planning and investment is to minimize the cost to society of reliable electric services, and to improve the environment and to encourage renewable energy resources.

However, the CPUC generally supports replacing the Market-Price Referent (MPR) approach to cost containment, which essentially caps the amount by which a renewable energy contract's costs can exceed those of gas-fired alternatives. In the present context of climate policy, the more appropriate comparison may be between renewable energy costs and those of other GHG reduction measures.

Proposed PU Code section 963 would adopt a “benchmark price” to evaluate the price of renewable energy contracts by comparing them to non-renewable alternatives. Unfortunately, a benchmark price would suffer from the same problems as the MPR that it is intended to replace. Also like the MPR, the CPUC's development of a benchmark price would require a complex calculation and invite significant litigation.

Instead, the CPUC should develop a methodology to evaluate individual contract prices, as this is the CPUC's most fundamental responsibility. Pursuant to PU Code section 454.5, the CPUC has existing authority to approve IOU Procurement Plans and contracts that comply with the Plan. Renewable procurement would be treated the same as other forms of procurement, which are evaluated based on comparable market prices and the reasonableness of project costs relative to other projects bid into the same solicitation.

Commission staff has presented a proposal in the context of the Long Term Procurement Planning proceeding to use a long term portfolio analysis to evaluate all utility procurement decisions from the perspective of cost, system reliability, and greenhouse gas impact. This approach would be consistent with the CPUC's existing statutory authority and could

potentially support comparisons with other GHG reduction measures within the electric sector.

Suggested amendments:

Delete the last sentence of proposed PU Code §963(b), which requires the cost limitation to be calculated as a percentage of a utility's revenue requirement. This method of total cost limitation is overly prescriptive and could result in complicated rules that are difficult to administer.

Delete proposed PU Code §963(c): it would not be a rational policy to allow all retail sellers to limit their procurement because one utility exceeded its cost limitation.

Delete proposed PU Code §963(d): This clause was necessary in previous legislation because certain contracts (e.g. bilaterals) did not count toward the cost limitation. However, the CPUC may wish to require all contracts to count towards a utility's cost limitation.

Renewable Energy Credits (RECs)

The CPUC generally supports tradable RECs, and the use of out-of-state RECs with no delivery requirement.

The CPUC supports allowing RECs as a procurement tool because, given the long lead time for building projects in California, allowing RECs would increase the liquidity of the renewables market, which, in turn, could lead to a more competitive market and lower RPS compliance costs. It would also facilitate compliance for some retail sellers, at a potentially lower cost, because signing long-term energy contracts doesn't fit the business model of smaller retail sellers.

A delivery requirement is not necessary because it creates complexity without creating a hedging benefit for ratepayers. Bundled contracts should have a requirement of delivery of the energy to California because they provide a hedging benefit since the underlying energy is bought at a fixed price. However, out-of-state eligible REC contracts should not have a delivery requirement because REC contracts implicitly never provide a hedging benefit because, by definition, the utility buying the REC is not buying the energy. Because RECs provide other benefits to ratepayers, however, we support allowing their use to reach 33%.

B. Feed in Tariff (FiT) for Small-Scale Renewables (Article 6)

The CPUC generally supports the use of FiTs for small-scale renewable distributed generation facilities. Under the Commission's existing program (established by AB 1969 of 2006, and modified by SB 380 of 2008), the CPUC has established feed-in tariffs for energy generated by an eligible renewable electric generation facility of no more than 1.5 MW, at a price established at the "market price referent" and adjusted by the Commission for time of delivery.

This bill would modify the program to raise the applicable facility size from 1.5 MW to 5 MW, to require the facilities to be strategically located near load, and to allow the Commission to adjust the price for "any other attributes of renewable generation." This bill would also require

publicly-owned utilities with 75,000 or more customers to offer this tariff, which they are currently not required to do.

The CPUC has an open proceeding on FiTs (R.08-08-009) in which it is considering whether: facilities up to 20 MW should be allowed to take the tariff; performance standards in FiT contracts should be changed; or third party ownership should be allowed.

This bill seems to be aimed at providing the CPUC with additional flexibility in its implementation of the FiT program. But it may inadvertently limit the CPUC's ability to maintain a viable program in the future. As such, the Commission recommends the following:

- Allow the Commission flexibility to set the total program cap in conjunction with the needs of the RPS program and according to the total capacity needs identified in the long-term procurement planning proceeding.
- Allow the Commission flexibility to designate a per project size, up to 20 MW per project, for the FiT program.
- Allow the Commission flexibility to determine the price paid for projects under the FiT based on the best available information in the RPS contracting pool. Delete any references to market price referent (MPR) and "attributes of renewable generation" as the basis for determining price. Delete any references to "indifference."
- Allow the Commission to set the price above avoided cost provided that the "above market funds" are kept within the same cost cap or cost containment mechanism that applies to the rest of the Renewable Portfolio Standard (RPS) program. Cost containment for the FiT program should be addressed as part of the Commission's regular procurement-related activities.
- Omit discussion of third-party ownership from statute since it is currently under consideration at the Commission. The Commission should be able to retain discretion over what types of ownership structures are required at the facilities that are eligible to participate in the FiT program.

Suggested amendment: Repeal PU Code section 399.20 since this bill's proposed PU Code section 985 is duplicative.

C. Renewable Infrastructure Authority (Article 7)

Developing an Annual Renewables Investment Plan

Under AB 64, RIA would be responsible for developing an Annual Renewables Investment Plan and take into account, among other things, reliability, resource adequacy, storage, demand reduction opportunities, environmental quality, and a "least cost electrical supply plan." In fact, such broader planning criteria and objectives are, and will continue to be, explicitly and extensively addressed by the CPUC in fulfilling its responsibilities regarding ratemaking and reliability of service. This includes the CPUC's administration of resource adequacy and long term procurement programs, which are being increasingly coordinated with California ISO activities, in terms of planning assumptions, scenarios and results, especially to address transmission and system integration implications of renewable resource priorities.

Besides duplicating existing efforts, any renewable energy plans or priorities produced by the RIA would need to be coordinated and mutually consistent with other resource planning activities that are legally required and go beyond the scope of the RIA. If AB 64 were to transfer the renewable resource planning function, which is an essential component of over-all utility supply planning, to a new entity, the CPUC would not be able to fulfill its constitutionally mandated duty to fully regulate electric rates. These interdependencies are a major reason for CPUC's close involvement and interest in transmission planning and transmission access issues.

The CPUC's long term procurement planning process is in the midst of refinement to more explicitly and robustly address renewable energy priorities, options and risks, incorporating information from RETI, from RPS procurement and CAISO interconnection results to date, and from the CAISO's transmission planning process and assessment of renewables integration challenges. It is not clear how RIA would result in improved renewable resource planning.

Funding Renewable Infrastructure Development

If RIA funds certain projects and thus takes a financial or other interest in certain renewable generation projects (or transmission) within a capital intensive renewable generation market that is hoped to be competitive and innovative, there can very well be a perception and even a reality of the RIA having an elevated interest in expediting those projects in which the RIA invests, as well as the associated transmission. Not surprisingly, the CPUC has already encountered complaints that RETI's efforts to prioritize renewable generation areas and associated transmission are going too fast in "picking winners and losers." Such complaints will become more forceful and more difficult to counter if the permitting entity itself has a financial interest in certain projects but not others.

Transmission Planning and Permitting

Among other things, RIA would "...designate and prioritize renewable energy and associated transmission corridor zones, certify (site and permit) all renewable generators above 5 MW and all transmission".² The bill would give the new RIA "exclusive power to certify all electric transmission lines..." As discussed below, separating the CPUC's transmission certification authority from its overall ratemaking authority, such as to transfer that authority to another entity, may be difficult.

The need for a new transmission line and its environmental impacts are tightly intertwined with the project's costs and its impact on retail electric rates paid by California utility customers. These factors are interrelated and must be balanced. Since transmission remains a regulated monopoly in California, transmission projects currently subject to CPUC jurisdiction are being proposed primarily by monopoly utility providers. When a regulated utility is authorized to build a transmission line, it is also guaranteed recovery of its costs plus a rate of return. In order to protect consumers from unreasonable rate increases, the review and approval of a new transmission line must include an analysis of not only its environmental impacts as required under CEQA, but also an analysis of its impacts on rates as required under the CPUC's ratemaking responsibilities.

² Except for one limited category of transmission interconnecting individual generators to the grid, which would apparently continue to be permitted by the California Energy Commission.

Also, there may be a constitutional impediment to transferring the CPUC's authority to certify (site and permit) electric transmission facilities proposed to be built by regulated public utilities because it is an integral part of the Commission's constitutional authority to regulate public utility rates. The California Attorney General has expressly found that the CPUC's authority to site transmission lines, as described in Public Utilities Code sections 1001, 1003, and 1005, is constitutional in nature. (Attorney General letter to Little Hoover Commission, June 23, 2005, pp. 6-9.) As such, neither the Governor nor the Legislature can legally remove constitutionally-granted functions from the CPUC.³

Environmental issues, public participation and coordination with federal agencies in transmission permitting processes

The main reason why the transmission permitting process is so time consuming is the complexity of environmental issues, the existing legal requirements to address such impacts and the need to coordinate such environmental reviews with federal agencies that are not under the same time constraints as California agencies. Due to the specific locations of California's high quality renewable resources, transmission lines to access those resources will most often require approvals from federal land management agencies and/or Native American tribes. RIA would not avoid or reduce this complexity.

Additionally, the different proposed RIA functions each require substantial public processes that must attain nontrivial levels of efficiency, transparency and stakeholder confidence. As previously discussed, most proposed RIA functions are already being performed elsewhere, and, in fact, they already incorporate an effective and established public process, whether it be via the CPUC's long term procurement and transmission permitting processes, the CAISO's transmission planning and other stakeholder processes, or via RETI.

Enhancing efficiency and coordination among various agencies

The CPUC has recently streamlined its permitting process, including increased attention to pre-filing activity such that when an application reaches the CPUC, it is more likely to be complete or nearly so.

The statewide collaborative Renewable Energy Transmission Initiative (RETI) involves the CPUC, CEC, CAISO, transmission owners, load serving entities, and renewable energy developers. It is providing important input to the transmission planning and permitting process both at the CPUC and CAISO programs. A new RIA, designating and prioritizing renewable resource zones and associated transmission corridors and projects, would duplicate both RETI's purpose and its outputs. It is unclear how the two would be reconciled and coordinated, or how ongoing resource and transmission planning processes which are being coordinated and preparing to use RETI information, would accommodate yet another source

³ The California Legislative Counsel has determined that "[B]ecause the California Constitution confers the function of public utility regulation on the commission, the Governor is precluded from transferring the statutory and constitutional authority of the commission that relates to the regulation of public utilities to any other entity of state government pursuant to the Governor's statutory authority to reorganize state government." (Legislative Counsel letter to Little Hoover Commission, June 20, 2005, p. 3.) Similarly, constitutionally-granted powers of the CPUC cannot be modified, curtailed, or abridged by legislation. (*People v. Western Air Lines, Inc.* (1954), 42 Cal. 2d 621, 637, citing *Western Assn. etc. R.R. v. Railroad Com.* (1916), 173 Cal. 802, 804.)

of renewable resource priorities and plans. Basically, it is unclear why it would be necessary or desirable to overlay an entirely new renewable energy prioritization process on top of RETI.

The CPUC supports and participates in the CAISO's transmission planning process and supports improved joint planning and operating ("seams") arrangements between the CAISO and non-CAISO transmission owners. CPUC staff also participate extensively in FERC proceedings regarding transmission access, planning, and cost recovery, since these matters tend to be both FERC jurisdictional and of considerable import to ratepayers and other California interests.

RIA's role, among other things, in identifying sites for transmission and performing "environmental, engineering and feasibility" studies, is duplicative of existing efforts and would have to be reconciled with existing transmission planning processes and requirements, particularly the California ISO's FERC-regulated, FERC-approved open planning process and responsibilities⁴, which entail numerous provisions and requirements for participation, nondiscrimination, transparency and coordination with other planning entities. This is embedded within broader west-wide transmission planning centered on WECC and involves numerous procedures and requirements to maintain system reliability as well as communication and cooperation among transmission operators. WECC and individual transmission operators are all responsible to NERC and ultimately to FERC, for planning and operating standards and practices that impact reliability. (And, most do impact reliability.) The RIA's new planning role would have to address the transparency, nondiscrimination and collaboration requirements for transmission planning required by FERC's Order 890⁵ and embodied in the CAISO's recently reformed planning process. Furthermore, the transmission planning role envisioned for the RIA involves only renewable energy objectives, and would in any event have to be incorporated into the bigger transmission planning picture, including wider economic and reliability issues.

Transmission Cost recovery

In the process of permitting transmission projects, the CPUC establishes cost caps, and as a result of Decision 06-06-034 (implementing Public Utilities Code § 399.25), may approve eligibility for recovery in retail rates of transmission costs incurred in support of renewable energy goals in the event FERC disallows recovery. The CPUC also participates on behalf of California interests in proceedings through which FERC approves rates for recovery of transmission costs, including costs of major projects permitted by the CPUC. As such, the CPUC would need to be an active participant in any RIA process for siting and permitting transmission facilities.

⁴ If the RIA would actually own a new transmission facility, that facility might not be subject to the same extent of FERC jurisdiction as public utility-owned transmission. However, this would complicate "seams" issues reflecting the contrasting jurisdictional and operational models for the CAISO's independently operated grid versus neighboring transmission systems owned by municipal or federal entities. If, more consistent with AB 64's emphasis on centralization of decisions, any RIA-owned transmission were to become part of the CAISO-operated system, then it would be fully subject to FERC jurisdiction regarding planning, cost recovery and other matters

⁵ Transmission projects must ultimately go to FERC for approval of rates and cost recovery, where the CPUC, within its retail ratemaking role, represents the interests of California consumers and other market participants.

Establishing Charges to Recover Rates

Proposed section 991.6 would permit RIA to establish and collect charges for the services, facilities, or energy furnished by a revenue-producing enterprise. CPUC is the entity constitutionally responsible for setting energy rates for all customers of CPUC jurisdictional investor owned utilities. The transmission component of these rates is established by FERC and is included in CPUC approved rates. Any additional charges established by RIA that might be ultimately passed through to utility ratepayers would need to be harmonized with the CPUC's jurisdiction.

PROGRAM BACKGROUND:

RPS Program

The RPS program was adopted in SB 1078 (2002), and subsequently modified by SB 107 (2006) and SB 1036 (2007). The CPUC is statutorily responsible for 1) requiring each utility to submit an RPS Procurement Plan, 2) adopting a pricing benchmark to evaluate RPS contracts, 3) adopting a process that utilities must use to evaluate renewable energy projects bid into their solicitations, 4) adopting RPS compliance rules, 5) reviewing and approving or rejecting utilities' RPS contracts, and 6) reporting to the Legislature, on a quarterly basis, on the RPS program. The CPUC has adopted approximately 30 decisions to implement these aspects of the RPS program and has approved over 110 RPS contracts for nearly 7,000 megawatts (1,000 megawatts of which have already begun delivering RPS-eligible energy).

Every year, the utilities each submit an RPS Procurement Plan, which includes, in part, a description of their renewable energy procurement supply and demand and a description of how they will evaluate RPS bids. The CPUC evaluates and approves each Plan. Then, the utilities issue a request for offers to solicit for renewable energy project bids. After receiving the bids, the utilities rank each one, select which bids to negotiate with, and execute a number of contracts. The CPUC evaluates each executed contract in light of its compliance with the utility's Plan and other CPUC decisions, the reasonableness of the contract price, and the viability of the project. In order to contain the costs of the RPS program, if the contract price is at or below a CPUC-calculated price benchmark (based on the cost of a fossil fuel plant), the price is considered reasonable. However, if it exceeds the benchmark, the utility has a limited amount of funds that it can use towards those above-market contract costs.

The CPUC has also become involved in other activities to improve the RPS program, to coordinate with agencies statewide to facilitate renewable energy development in California, and to provide robust information to the public and Legislature on the progress of the RPS program and the trends in the renewable energy market. For example, we started the Renewable Energy Transmission Initiative (RETI), and involved the CEC, CAISO, developers, and environmental groups in order to facilitate statewide renewable transmission planning for new renewable energy projects. We maintain numerous databases of project characteristics and viability and produce robust analyses on the barriers facing renewable energy development. We have also begun an analysis of the feasibility and cost of a 33% RPS, which will result in a better understanding of the barriers and solutions for reaching a higher RPS target in California.

Feed-in-Tariff for Small Scale Renewables

Public Utilities Code § 399.20 requires each electrical corporation to establish a tariff for the purchase of electricity from an eligible renewable water or wastewater facility at a market price determined by the Commission. The Commission implemented § 399.20 by D. 07-07-027 on June 26, 2007. The decision adopted tariffs and standard contracts for the purchase of this electricity up to 1.5 MW from water and wastewater customers, and additionally it made the same program available to all other renewable customer generators in PG&E and SCE territory. Later, the Commission expanded the program to all customers in SDG&E's territory. The Commission's implementation of § 399.20 is considered phase 1 of the Tariff and Standard Contract Implementation for RPS Generators. The Commission is currently considering phase 2, which includes consideration of expanding the contract to facilities up to 20 MW under R.08-08-009.

On September 28, 2008, SB 380 amended Public Utilities Code § 399.20 to allow purchase of electricity for any eligible renewable electric facility and increased the statewide cap from 250 MW to 500 MW, and it removed any requirement that the tariff be available to water or wastewater facilities. Comments have been filed with the Commission concerning implementing the changes mandated in SB 380, and the Commission is currently working on a Decision to implement SB 380.

The California Energy Commission (CEC) has been investigating feed-in tariffs. They held staff workshops on June 30, 2008 and October 1, 2008 in order to discuss policy directions for feed-in tariffs. Prior to the October 1, 2008 workshop a draft consultant report was issued entitled "California Feed-in Tariff Design and Policy Options". Based on that report and workshops, the CEC has recommended that the Commission immediately implement a feed-in tariff program for all RPS-eligible generating facilities up to 20 MW in size. They recommend that such a program should include must-take provisions as well as cost-based technology-specific prices that generally decline over time and are not linked to the MPR.

As a part of R.08-08-009, the Commission's Energy Division staff issued a data request on January 28, 2008 in preparation for a workshop to be held on February 10, 2008. The purpose of the workshop is to determine if the existing feed-in tariff contract should require additional terms and conditions if the Commission were to expand the existing feed-in tariff contract from 1.5 MW up to 20 MW. Examples of additional terms and conditions include performance standards. Participants of the workshop will review the existing feed-in tariff contract, proposed additional terms and conditions, and parameters of terms and conditions. The workshop will result in clarification of party positions and identification of areas of consensus.

Transmission siting and permitting

Existing constitutional authority exists for CPUC jurisdiction over transmission siting and approval. Also, per the California Environmental Quality Act (CEQA), the CPUC has discretionary authority (CPCN process) regarding electric infrastructure owned and / or operated by investor owned utilities, therefore CPUC is the lead agency in preparing the environmental impact report (CEQA).

Currently, for siting transmission lines to be constructed by investor owned utilities, the IOU prepares a plan of service and submits it to the CAISO for approval. After the CAISO

approves the project based on economic and reliability analysis, the IOU prepares an application and Proponent's Environmental Assessment (PEA) and submits it to the CPUC. Once the application is filed with and deemed complete by the CPUC, an environmental document is prepared. During the process of preparing the environmental document, the CPUC staff holds extensive public meetings and agency consultations in order to site a transmission line. Preparation of the environmental document and the CPUC's CPCN process take place concurrently. Eventually, the environmental document is used in the CPCN process. When the applicant receives the CPCN approval, they may start construction.

Currently, the CEC permits thermal power facilities greater than 50 MW. A developer files an application with the CEC and CEC staff reviews the application and determines if the application is adequate. When the application is adequate, the CEC staff prepares a draft and final staff assessment. When the Commission approves the application, the developer can construct the power facility.

CPUC staff currently participate in the CAISO's transmission planning process including issues related to renewable and other resource priorities as well as the need for and efficiency of transmission projects.

CPUC staff plays a leading role in the RETI process to prioritize renewable energy zones and associated transmission, and generally works closely with CAISO and stakeholders to coordinate supply and transmission planning on an increasingly forward-looking basis.

STAFF CONTACTS:

Pamela Loomis, Director, OGA

(916) 327-8441

pcl@cpuc.ca.gov**Date completed:** March 27, 2009.