



ANALYSIS

CALIFORNIA PUBLIC UTILITIES COMMISSION

AB 1106 (Fuentes) As Amended June 25, 2009

SUMMARY OF BILL:

This bill amends Section 399.20 and adds Section 399.21 of the Public Utilities Code. It would expand the current feed-in tariff (FIT) program, creating two programs, or tiers, based on project size. Tier one for projects up to 5 megawatts (MW) with price based on cost of production for each specified technology plus a reasonable profit as determined by the Commission. Tier two for projects sized 5-10 MW with price based on total benefit of the electricity to ratepayers as determined by the Commission, with the price reflecting the value of every kilowatt hour of electricity on a time-of-delivery basis and any other attributes of renewable generation. The bill would require the Commission to develop performance standards for Tier 2 projects. The electricity generated by these projects would count toward the utility's RPS requirements. The current feed-in tariff program structure would sunset June 30, 2011. The bill would require the Commission to implement the new structure by July 1, 2011. **The Commission's position is Support if Amended.**

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Commission supports feed-in tariff policy, but given the complexity of the policy, suggests that more time for discussion be considered. Additionally, although the Commission supports AB 1106 with amendments, it must be noted that other pricing structures should be considered, as there are more simplistic and faster to implement structures than the two-tier program suggested in AB 1106. The Commission is currently considering an expansion of the current feed-in tariff program and is in the midst of considering size and pricing changes through an open stakeholder process in a Commission proceeding. When considering program design for a FIT program, the cost, risk, and timing need to be carefully balanced with the goals and progress of the overall RPS program. The chief policy argument in California for FITs is to minimize transaction costs for smaller renewable projects whose primary purpose is to serve local energy needs at the distributed generation (typically distribution interconnection) level. Projects larger than 10 MW typically do not interconnect at the distribution level and are likely more complex projects that require detailed project-by-project assessment such as site control, permitting, and transmission access. Thus, they may not be as well suited to a one-size-fits-all FIT approach.

The bill should provide the Commission flexibility in determining the FIT price through an open stakeholder process. The Commission should have the flexibility to determine the program capacity cap through long-term renewable planning. The bill allows renewable projects up to 5 MW (in Tier 1) to instead receive service pursuant to an alternative net metering program, which would result in new net-metering tariffs for eight different renewable technologies. This provision would greatly expand current net

metering rules, would be extremely complex to implement, and could have significant impacts on rates for nonparticipating ratepayers.

SUMMARY OF SUGGESTED AMENDMENTS (IF ANY):

Customers who elect to take FIT waive their right to receive Alternative Net Metering.

The bill allows a project on Tier 1 to elect to instead receive service pursuant to an alternative net metering program, which would result in new net-metering tariffs for eight different renewable technologies. This provision would greatly expand current net metering rules, would be extremely complex to implement, and could have significant impacts on rates for nonparticipating ratepayers. The language for Tier 2 customers, Section 399.21 (e)(4), should be included for Tier 1 customers. Section 399.21 (d)(5) should be stricken and replaced with the language for Tier 2 customers as referenced.

Allow more time for implementation, given the complexity of the pricing structure in the bill.

The bill requires program to be up and running by July 1, 2011. This date is unrealistic given the requirements of the bill. The Commission will need at least until January 1, 2012 to implement the program. The Commission will first have to identify a methodology to determine prices in Tier 1 and 2, which will be a very litigious process and require both staff and administrative law judge resources. The bill will require a new Commission proceeding, which usually takes up to 18 months, but this proceeding could result in more than one decision, which would necessitate more time. Staff would have to implement the decisions and calculate the prices using the methodology established in the decisions, which will require consultant resources and a stakeholder process. The Commission will have to approve the prices via Resolution once complete. This whole process will be resource intensive and require much time.

The bill should allow the Commission flexibility to determine a FIT price.

Instead of two pricing structures, this bill should only have one pricing structure. Both of the proposed pricing structures will be very litigious and could take a few years to implement. The Qualified Facilities proceeding at the CPUC is a good example of this of the complexity and years of litigation.

Price – Tier 1: This bill requires the Commission to review and update the contract and price terms every two years. It also requires the Commission to approve price at a rate deemed reasonable for each renewable technology (8 total), with a maximum price of \$0.30/kWh. In determining price, the bill requires the Commission to determine:

- Reasonable cost of production of each technology, taking into account the availability of federal and state tax credits
- Reasonable profit commensurate to that authorized by the Commission as a reasonable rate of return for the electrical corporation

This pricing language utilizes the German model for FIT pricing. The German FIT program pays generators generously and lacks competitive pressures to bring costs and price down. Creating a price for 8 different technologies will be very labor intensive and require substantial Commission staff time and resources to implement. For

example, Germany has multiple agencies implementing the German FIT program. In addition, the renewable companies and electrical utility companies have different risk profiles. Tying the “reasonable profit” to the rate of return for the electrical corporation is arbitrary and not necessarily the correct benchmark. Lastly, this language requires the Commission to review the price every two years. This can lead to regulatory uncertainty and can send a negative signal to renewable project investors, even if the new price only applies to new projects going forward.

CPUC staff recommends that a more prudent approach to FIT pricing would be to focus on the key technologies that possess sufficient renewable potential and scale to address state renewable and climate change goals within the 2020 timeframe instead of developing a FIT price for each technology category.

The Commission would identify the key technologies and develop a pricing structure that provides sufficient payment to stimulate untapped markets and build new projects, but does not overpay or reduce the ability of competitive solicitations to put downward pressure on price. All technologies would still be able to participate in the FIT program.

The bill should allow the Commission flexibility to determine a FIT price. The language allowing for the MPR plus “renewable attributes” should be deleted.

Price – Tier 2: The price paid under the feed-in tariff would change from the market price referent adjusted for time-of-delivery (TOD) to the market price referent adjusted for TOD and any other attributes of renewable generation. These “other attributes of renewable generation” are undefined and have not been litigated at the Commission. Parties would pressure the Commission to consider a whole range of issues as an attribute of renewable generation. This provision might conflict with other statute or Commission decisions related to the definition of renewable energy credits, which are also “attributes of renewable generation.” The language allowing for the MPR plus “renewable attributes” should be deleted and replaced with language that allows the Commission flexibility to determine a FIT price that does not overpay, but is high enough to attract development in key technologies, such as solar PV, that possess sufficient renewable potential and scale to address the state’s renewable and climate change goals.

Contract length should be the same for both Tier 1 and Tier 2.

The bill now requires a contract length of 25 years for all Tier 1 projects. Twenty-five years is excessive, especially for technologies whose performance may degrade over time. Instead, the bill should use the same language for Tier 2 contracts, which allows the seller to choose the contract length of 10, 15, or 20 years.

BACKGROUND INFORMATION ON IMPACTED PROGRAMS, PRACTICE OR POLICY:

Public Utilities Code § 399.14 requires the Commission to establish a competitive process to select renewable contracts based on least cost and best fit. Competitive markets benefit ratepayers by using competitive pressures to lower total costs. Fixed price standard

contracts use administrative processes to set the price, which does not benefit from competition. Thus, it is very difficult to determine the right price for a feed-in tariff. If the price is too low, then the project will not attract new investment. If the project is too high, then ratepayers will overpay.

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 from 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 is considering expanding the existing FIT program from 1.5 MW up to possibly 20 MW. The ALJ is currently finalizing a ruling that will contain a staff proposal on program design issues and terms and conditions. Staff recommends that the Commission expand the existing program to 10 MW and consider changing the FIT price in the next phase of the proceeding. The Commission issued a ruling in June, and staff issued two data requests in October and January to better understand party positions. Staff also held a workshop in February on FIT program design and terms and conditions. In designing an expanded FIT program, the Commission needs to carefully balance the cost, risk, and timing of the overall RPS program with the cost, risk, and timing of an expanded FIT program.

OTHER STATE OR FEDERAL INFORMATION:

Congress is currently considering proposed feed-in tariff national legislation, in conjunction with national RPS bills. There is currently no federal mandate related to feed-in tariffs.

Several other states are considering feed-in tariffs, and the City of Gainesville, Florida recently enacted a small feed-in tariff in lieu of a program like the California Solar Initiative.

Eighteen European countries have FIT programs and Germany leads the world in terms of installed capacity for both photovoltaics (PV) and for wind energy as a result of its feed-in tariff policies. By the end of 2007, Germany had 22,622 MW of wind and 3,800 MW of solar PV capacity installed in the country, with annual additions of 1,667 MW of wind and 1,100 MW of PV added in 2007 alone. The German FIT has been very successful in building new projects, but as mentioned previously, has come at a high price to ratepayers.

Spain also has a feed-in tariff program that has resulted in much development. By the end of 2007, Spain had installed 15,145 MW of wind capacity, and 500 MW of PV capacity. On the other hand, Spain had to freeze and then revise its feed-in tariff program midcourse because of lucrative payments and unexpected interest. This boom and bust hurt the solar market in Spain and has resulted in economic loss and oversupply. Thus, the success of a feed-in tariff is very dependent on the goals of the program and the program's design.

LEGISLATIVE HISTORY:

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

SB 380 (Kehoe, 2008) altered P.U. Code Section 399.20 to include all renewables and increased the statewide cap to 500 MW.

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

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