BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

Preparation of the *2008 Integrated Energy Policy Report Update* and the *2009 Integrated Energy Policy Report*	))))	**Docket No. 08-IEP-1**
Implementation of Renewables Portfolio Standard Legislation	))))	**Docket No. 03-RPS-1078 RPS Proceeding**

COMMENTS OF CONSTELLATION AND THE ALLIANCE FOR RETAIL ENERGY MARKETS ON 2009 IEPR - FEED IN TARIFFS

As requested the California Energy Commission ("Commission") in the *Notice of Staff Workshop: Renewable Energy "Feed-In" Tariffs* ("Workshop Notice"), Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, "Constellation"), together with the Alliance for Retail Energy Markets ("AReM"), respectfully submit the following comments on the Draft Consultant's Report entitled *Exploring Feed-in Tariffs for California: Feed-in Tariff Design and Implementation Issues and Options* ("FIT Report").

I. INTRODUCTION

The FIT Report provides a comprehensive review of serious questions and the pros and cons associated with the Feed-In Tariff ("FIT") model for promoting the development of customer-owned and on-site renewable energy generation facilities. Furthermore, the workshop conducted by Commission staff on June 30, 2008 provided a forum for the useful exchange of information about the mechanics of FITs, and how they have been used both in the United States and in other countries. After having carefully reviewed the information presented in the FIT Report, and having participated in the June 30 workshop, Constellation and AReM have concluded that expanding of the use of FITs in California would be counterproductive to the goal of promoting the development of more renewable resources in the state, would undermine and potentially eviscerate the state's existing Renewable Portfolio Standard ("RPS") program, and would turn back the clock on critical reforms aimed at fostering competitive markets that are already well underway. Therefore, Constellation and AReM urge the Commission to reject the notion that FITs should play a broader role in the California renewable energy market than is already contemplated under existing legislation and regulations.

II. COMMENTS

A. Expanded Use of FITs Would Be Counterproductive and Deter Innovation.

To the extent the use and availability of FITs is expanded, it would inevitably replace competitive market forces that drive innovation and exert downward pressure on purchaser costs. It would eliminate the need for investors in FIT-eligible projects to manage the risks of their investments, and would instead foist on utility ratepayers all the investment risks. Moreover, as was discussed at the workshop, it does not appear that FITs in general would remedy any of the existing contract failure problems, and particularly not for larger renewable projects. In Constellation and AReM's view, the ratepayer-backed cost recovery that is required under the FIT model will stifle efficiency and reduce incentives for innovation in general and customer-driven product development in particular.

B. Allowing the Use of Tradable RECs for RPS Compliance Will Better Promote New Development.

The FIT Report suggests that it is necessary to consider expansion of the FIT approach because California's RPS program does not include tradeable Renewable Energy Credits ("RECs") as an RPS compliance mechanism. This suggests that California is not going to integrate RECs into its RPS program, while the reality is that existing legislation permits the use

RECs for RPS compliance, and the California Public Utilities Commission ("CPUC") is expected to issue an order soon on the implementation of a tradable RECs market. Indeed, this Commission's own RPS regulations contemplate the use of RECs in that they require all qualified resources to be registered with WREGIS.[1] Constellation and AReM believe that the expansion of the RPS program to include tradable RECs will result in a more market-based approach to renewables development, stimulate innovation, and help ensure that the most cost effective "solutions" to the state's renewable energy goals are realized.

That is because RECs will provide transparency for the valuation and pricing of new renewable energy generation facilities, thereby giving developers and investors the information necessary to plan and finance their projects. It is imperative that, with regard to the development of new renewable generation projects and technologies in general, and particularly in light of increasing carbon constraints, regulators should be careful to avoid the inclination to pick winners and losers, and instead should foster a market-driven environment that seeks and rewards the most cost effective solutions. Implementation of RECs will help achieve these objectives, and the efficacy of the RPS with RECs should not be undermined at the outset by the adoption of FITs.

C. Increased Reliance on FITs Will Deter New Investment in Merchant Generation.

Expansion of FIT programs would send an ill-conceived and ill-timed signal to the market and consumers that California is departing from established regulatory policies that favor competition and customer choice over regulatory intervention. Current contracting mechanisms used by the utilities for renewable generation (and conventional generation as well) are an

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[1] As of January 1, 2008, "all generating facilities, retail sellers, procurement entities, and third parties participating in California's RPS must use and be registered as account holders with WREGIS as part of RPS compliance...." RPS Eligibility Guidebook, 3rd Edition at p. 27.

artifact of what is referred to as the "hybrid" market structure. The hybrid market structure has permitted the utilities to invest in supply side resources through both traditional utility ownership and via long term tolling agreements. It has been amply demonstrated that a regulatory paradigm that continually and regularly authorizes direct infrastructure investment with regulatory backstop guarantees is almost certain to eliminate merchant investment. That is because utility-based investment, with its regulatory guarantees of cost recovery, poses unhedgeable and unmanageable risks for merchant investors. It has been shown time and time again that a supply side sector that relies increasingly on command-and-control approaches to energy infrastructure management is more costly over the long-term, as well as being potentially detrimental to technological innovation. The FIT approach is a perpetuation and even more deleterious command-and-control approach to asset investment, and as such would have lasting negative impacts on ongoing efforts to return robust merchant competition to California's supply side sector for conventional, demand-side, and renewable resources.

D. Expanding FIT Programs Will Hamper Retail Competitition.

Increased use of FITs will create new non-bypassable charges ("NBCs") without any corresponding risk management. The more NBCs departing load customers are required to pay, the more difficult it is for non-utility suppliers to offer customers competitive options, and the less likely customers will have real choice as to their electricity supplier. A consequence of increased use if FITS will thus be further barriers to a return to market structures that support customer choice.

III. CONCLUSION

In summary, competitive wholesale and retail markets will work best to support investment through competition if market rules provide the ability to prudently and effectively hedge investment risks and provide regulatory certainty that investment value will not be undermined by regulatory intervention. Regulatory certainty and re-establishing a competitive supply source market for all forms of generation – renewable and conventional – and demand response resources is where regulators should be focusing their attention, rather than on new "command-and-control/integrated resource approaches" that are relics of the vertically integrated utility market structure.

Constellation and AReM do not believe that the expanded use of FITs would serve any useful purpose in achieving California's established renewable objectives. Moreover, it would undermine the effectiveness of the existing RPS program and competitive market policies that are intended to ensure robust wholesale and retail competitive markets. Instead, Constellation and AReM recommend that the Commission, working collaboratively with other agencies, the California Independent System Operator, and other stakeholders, focus on completing the important work of implementing tradable RECs and establishing robust market based mechanisms that support both renewable and greenhouse gas emission reduction goals. Constellation is not providing any specific responses to the questions posed in the Workshop Notice on FIT implementation issues at this time.

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Respectfully submitted,

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