

<b>DOCKET</b>	
<b>03-RPS-1078</b>	
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July 15, 2008

California Energy Commission  
Attn: Docket Office  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5504

RE: Independent Energy Producers Association Comments  
RE 2009 IEPR—Feed-in-Tariffs  
**Docket Number 03-RPS-1078**

Dear Commissioners:

The Independent Energy Producers Association appreciates the opportunity to comment on the 2009 IEPR Feed-in-Tariff issue. IEP's comments pertain to the following topics:

- The implications of rate structure and rate adjustment.
- Tariffs for up to 20 MW.
- Tariffs as a supplement, not a replacement, to RPS solicitations.
- Availability of information on the distribution system.
- RECS alongside a feed-in-tariff.

**1. The Impacts of Rate Structure and Rate Adjustment**

As the experience in Europe has shown, the feed-in tariff structure can be an effective policy tool for stimulating investment in the development of new renewable resources. The success or failure of this policy tool hinges on (a) the rate structure adopted for the tariff and (b) the timeliness of rate adjustments, upward or downward. In many ways, the rate structure buffers the pace of the interconnection of eligible renewables under this structure. If the tariff rate is set too low, it will not lead to any new renewable facilities being constructed. If the rate is adjusted too slowly in response to changing economic conditions (*i.e.*, the increasing cost of building new generation of any sort) it will not result in any new renewable investment. If the rate is set too high, the Commission and its sister agency, the California Public Utilities Commission (CPUC) may be faced with (a) the good news that the program is working well, as measured by newly interconnected renewable projects,

and (b) a decision as to whether the tariff rate needs to be adjusted to moderate the flow of new renewables. In light of the underwhelming performance of the existing RPS program to date (*i.e.*, in 2006 the state achieved a 7% renewable penetration rate while in 2007 the state achieved only a 6% penetration rate), the two Commissions should not hesitate to try new approaches to attract more eligible new renewable generation through the feed-in tariff approach.

One important consideration the Commission should keep in mind as it deliberates on the feed-in tariff is that the tariff and any associated standard contract, in combination, must be financeable if this approach is expected to result in investment in new renewable resources. That is, the tariff and contract must offer certainty and must not impose any undue risks on participating generators that would make it impossible to obtain the financing necessary to build the project. Unless the tariff and standard contract are financeable, the feed-in tariff approach will be merely an interesting academic exercise.

## **2. *Tariffs for up-to 20 MW***

Though the notion of going beyond 20MW with a feed-in-tariff will need to be studied more thoroughly before it is put to use, an increase *to* 20 MW is a reasonable incremental step in the development of the tariff/standard contract approach. Generators of less than 20 MW are often disadvantaged in RFOs, because they must incur the same administrative costs and costs of participation as larger generators, but they have fewer MW and MWh over which to spread those costs. Furthermore, implementing now a feed-in tariff for up to 20 MWs will provide critical information and background for consideration of expanding a feed-in tariff for eligible renewable resources sized 20 MWs and greater needed to meet RPS and GHG policy objectives.

## **3. *Feed-in-tariffs as a Supplement not a Replacement to RPS Solicitations***

It is extremely important to ensure that an increase in the size limit for feed-in tariffs that include eligible RPS projects does not undermine the existing RPS mechanisms. That is, generators of 20 MW or less should retain the opportunity to compete in RPS solicitations and to obtain bilateral contracts from the utilities. The feed-in tariff approach should not become the exclusive or even the favored means for these smaller projects to participate in the RPS program, nor should the feed-in tariff approach be viewed as the exclusive or favored means by which the utilities contract for renewable resources of 20 MW or less.

RPS-eligible projects that qualify for the feed-in tariff should be allowed to participate in either the feed-in tariff program or RPS solicitations. The feed-in-tariff approach should be a complement to the existing RPS program, not a

substitute. Individual projects may not be suitable for the feed-in tariff approach and may prefer the comparative flexibility of bilateral contracts resulting from competitive RPS solicitations. Projects with cost structures that require Above-Market Funds, for example, could not take advantage of the feed-in tariff approach.<sup>1</sup>

IEP would like to make the general comment that the prices, terms, and conditions of a feed-in tariff should not be linked to prices historically paid for renewable energy. To the extent the feed-in tariff approach is considered to be part of the RPS program, the only constraints on the feed-in tariff are the specific requirements of the RPS statute.<sup>2</sup> To the extent that the feed-in tariff approach is considered a separate program from the RPS (see footnote 2), the Commission and the CPUC have more latitude to consider the unique circumstances and requirements of new renewable facilities of 20 MW or less and to adjust the tariff rate as required to obtain the renewable capacity associated with the cap for the program or to obtain the renewable energy needed to meet RPS goals. In either case, the Commissions need not be strictly bound by historical practices as they consider an expansion of the feed-in tariff. However, while the feed-in tariff rate should be set at a level that will encourage the interconnection of new renewable resources, the prices revealed historically or contemporaneously in other contexts may provide information or insights that are relevant to the determination of the feed-in tariff rate.

#### **4. Availability of Distribution System Information**

A feed-in tariff creates the potential for additional generation resources to interconnect to distribution-level facilities. However, the information needed to make siting choices for interconnections through distribution facilities is not available to non-utility developers. If the Commission would like smaller generators to contribute significantly to the RPS goals, then information about

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<sup>1</sup> See Public Util. Code § 399.15(d)(2)(A).

<sup>2</sup> If the feed-in tariff is deemed to be part of the RPS program, then as a practical matter the tariff rate should be set at the market price the CPUC determines pursuant to Public Util. Code § 399.15(c). Note that the specific approach the CPUC has so far adopted for calculating the Market Price Referent (which is based on fossil fuels and technologies and contains no recognition of the additional value of renewable energy) is *not* required by the RPS statute. The CPUC could alter its approach to the calculation of the MPR to more closely reflect the value that the market currently attaches to renewable power. Alternatively, the Commission and the CPUC could develop the feed-in tariff as a program that is separate from the statutory RPS program, in much the same way that renewable power procured from Qualifying Facilities has a separate basis from the RPS but nevertheless contributes toward the achievement of RPS goals. If the feed-in tariff is deemed to be a separate program, the CPUC could set the tariff rate at a level designed to attract enough renewable power to meet the cap established on capacity obtained through the feed-in tariff or to achieve other renewable goals.

the distribution system must be made more widely available. Developers need to understand the constraints on the distribution system, since the condition of the distribution system could sway the choice between two potential sites. The CAISO makes this information available for the transmission system under its control, but at the distribution level the necessarily information is held by the individual utilities and not made available in a useful form to potential developers.

**5. RECS Alongside a Feed-in-Tariff**

IEP believes that under the feed-in-tariff framework, it makes sense for the tariff rate to incorporate the environmental attributes of any energy purchased and delivered under the tariff. If, for example, a generator is being paid under the tariff rate, then the environmental attributes associated with the purchased energy must be transferred to the utility purchasing the energy for compliance purposes.

**6. Issues to be Considered**

IEP has put together a range of potential options for the different types of feed-in-tariffs as demonstrated below. It is important to note that it makes a difference as to which box is chosen and where the tariff will ultimately fall.

<b>Type of Interconnection</b>	<b>Type of Tariff</b>	<b>How Are Costs Collected</b>	<b>Allocation of RPS credit</b>
Distribution Level	Utility Tariff	Utility	100% to Purchasing Utility
Transmission Level	CAISO Tariff	Transmission Access Charge (TAC)	Pro rata by TAC
Transmission Level	Utility Tariff	Utility	100% to Purchasing Utility

This selective range of options brings about many questions with respect to how the feed-in-tariff process will be implemented:

- Will the feed-in indeed be a standalone tariff or will it require a supplemental contract?
- How will the generators be paid?
- What will be the method for cost recovery?
- What is the relationship of the tariff to long term planning?

- IF the Transmission Access Charge (TAC) were used for the means of cost recovery rather than a Power Purchase Agreement (PPA), how would the TAC be administered and employed?
- What would be the criteria for the evaluation and determination that the state would apply the feed-in-tariff to projects transitioning to 20 MW's in size?
- How will the feed-in-tariff relate to expanding the transmission and/or distribution system to interconnecting new renewables?
- To what extent does the feed in tariff support or undermine nondiscriminatory transmission and distribution access for renewables?
- What is the role of the Federal Energy Regulatory Commission (FERC), if any, in the implementation of a feed-in-tariff in California?

### **Conclusion**

IEP supports the Commission's efforts to expand its existing, limited feed-in-tariff approach. An effective feed-in tariff could prove to be a valuable tool for achieving the state's RPS goals. IEP hopes its comments are useful to the Commission's consideration of an expansion of the feed-in tariff and respectfully urges the Commission to pursue an expanded feed-in tariff for renewable generators.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive, slightly slanted style.

Steven Kelly  
Policy Director

July 15, 2008