

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

**08-IEP-1**

**Preparation of the 2008 Integrated  
Energy Policy Report Update and the  
2009 Integrated Energy Policy Report** )  
)  
)  
\_\_\_\_\_ )

**Docket No. 08-IEP-1**

<b>DOCKET</b>	
<b>03-RPS-1078</b>	
DATE	OCT 10 2008
RECD.	OCT 10 2008

**Implementation of Renewables  
Portfolio Standard Legislation** )  
)  
\_\_\_\_\_ )

**Docket No. 03-RPS-1078  
RPS Proceeding**

**COMMENTS OF CONSTELLATION AND THE ALLIANCE FOR RETAIL ENERGY  
MARKETS ON CALIFORNIA FEED-IN TARIFF DESIGN AND POLICY OPTIONS  
REPORT**

As requested in the California Energy Commission (“Commission”) *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”),<sup>1</sup> respectfully submit the following comments on the Draft Consultant’s Report entitled *California Feed-In Tariff Design and Policy Options Report* (“FIT Report”).

**I. INTRODUCTION**

On June 30, 2008, the Commission conducted a workshop (“June 30 Workshop”) to discuss its consultant’s draft report<sup>2</sup> that had been issued shortly before the June 30 Workshop. Various parties submitted oral comments at the June 30 Workshop and written comments in

---

<sup>1</sup> AREM is a California non-profit mutual benefit corporation formed by electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AREM but not necessarily those of its individual members or any affiliates of its members with respect to the issues addressed herein.

<sup>2</sup> Draft Report: Exploring Feed-in Tariff for California – Feed-In Tariff Design and Implementation Issues and Options (“Draft Report”).

follow-up to the Workshop. As noted in the Comment and Response Synopsis that was provided along with the FIT Report,

The majority of Comments opposed expanding feed-in tariffs to projects larger than 20 MW because of concerns which included:

- Lack of clear objectives.
- Be counterproductive because of incompatibility with the existing RPS [Renewable Portfolio Standard].
- Need to further evaluate current feed-in tariff programs before expansion.
- Existing RPS solicitation is adequate.
- Regulatory command-and control approach should not replace current market driven competitive solicitations.<sup>3</sup>

Constellation cited many of those same concerns in the comments that it submitted on July 11, 2008<sup>4</sup> (and incorporates those comments herein), specifically:

- The implementation of FITs at this time would be counterproductive to the goals of RPS and would deter innovation.
- The implementation of tradable RECs should increase the efficacy of the existing RPS program with respect to supporting new development.
- Increased use of FITs will deter merchant investment in renewables.
- Expanded FITs will deter retail competition.

None of these general concerns about the expansion of FITs are adequately addressed in the FIT Report. Indeed, concerns that the goal of 20% renewables by 2010 will not be achieved, while entirely valid, should lead to a greater focus on reforms that are needed to the RPS program, rather than diverting attention away from those needed reforms and creating an entirely separate renewable development program, especially when that new program is likely to undermine and/or supplant the existing RPS. In these brief comments, Constellation and AREM

---

<sup>3</sup> See Feed-In Tariff Design and Implementation Issues and Options, June 30 Workshop: Comment and Response Synopsis, page 1.

<sup>4</sup> “Comments Of Constellation And The Alliance For Retail Energy Markets On 2009 IEPR - Feed In Tariffs” are located on the CEC’s website at [http://www.energy.ca.gov/portfolio/documents/2008-06-30\\_workshop/comments/](http://www.energy.ca.gov/portfolio/documents/2008-06-30_workshop/comments/).

note additional specific concerns that are raised by the various policy paths described in the FIT Report. In conclusion, the Commission should set aside, for the time being, further efforts to increase the use of FITs.

## **II. COMMENTS**

In the Workshop Notice, the Commission listed a series of questions about the proposed policy paths contained in the FIT Report. While Constellation and AReM do not provide answers to each question, the comments herein describe what are believed to be flaws in each of the policy paths; why FITs do not resolve RPS issues; and that the Commission's focus should remain in implementing improvements to the RPS.

### **A. Each of the proposed policy paths is flawed.**

Policy Path 1 would defer implementation of FITs until a future time that it becomes certain that the 2010 RPS goal has not been met, and would then offer cost-based fixed price tariffs that are distinguished among technology types. Our concern with this approach is that it will lead to a "self-fulfilling prophecy" of failure of the RPS. Renewable developers that might otherwise analyze and initiate investment based on the RPS program will face a new risk that FITs will be implemented and undermine the value of their investments. In short, having FITs "at the ready" should the RPS goals not be achieved will create a significant level of market uncertainty that may well cause developers to simply wait for the FIT trigger to occur.

Policy Path 2 would implement FITs within one utility for generation facilities greater than 20 MW under a fixed price tariff with no limits on the quantities that are eligible for the tariff within a three year window, and no distinctions as to renewable technology types. The FIT Report itself notes a key concern with this approach in that it "may not promote resource

diversity.”<sup>5</sup> In addition, the fact that this approach would impose significant renewable costs on the customers in only one utility territory would undoubtedly create a significant competitive disadvantage for businesses in that territory and would impose markedly higher costs on residential ratepayers in that territory compared to other territories. Policy Path 2 therefore has significant flaws from a competitive standpoint.

Policy Path 3 seems similar to Policy Path 1 except that the trigger is the availability of transmission within a Competitive Renewable Energy Zone (“CREZ”). Constellation and AEM have no opinion on this policy path at this time.

Policy Path 4 would provide FITs for solar renewable investment only within one utility territory, likely subject to a cap on the amount of new generation that could take advantage of the FIT. Any renewable program that, at the outset, picks the winners (in this case, solar) and losers (all other technology types) should be avoided because of the limitations that they will impose on innovation and new technology development. Furthermore, by limiting this approach to a single utility territory, the approach suffers from the same flaws described above with respect to Policy Path 2 in terms of the competitive disadvantages it would create in that service territory.

Policy Path 5 would provide FITs in all service territories for biomass resources. As with Policy Path 4, picking a single winner (biomass) is counterproductive in terms of inspiring and supporting technology innovations, and should be avoided.

Policy Path 6 is similar to Policy Path 1 in that it would offer a cost-based tariff to all renewable resources, without regard to technology type. However, it would limit the size of the resource to those under 20 MW, and would not contain the same RPS trigger that is contained in Policy Path 1. While the limitation on the size of facilities that could qualify for the FIT would limit the extent to which this approach would undermine the RPS, the fact that this approach is

---

<sup>5</sup> See FIT Report, page 2.

uncapped with respect to how many MW could be eligible for this FIT would create a significant level of market uncertainty for larger renewable developers that could and likely would prove chilling to investment.

In summary, each of the proposed Policy Paths is flawed when viewed in the context of the existing RPS; indeed, implementation of FITs must be viewed as generally incompatible and counterproductive to an RPS program. Therefore, Constellation and AReM reiterate the recommendation that efforts to establish FITs, under any of the proposed Policy Paths, should be set aside for the time being. Instead, greater attention should be devoted to improving the RPS program to ensure its success, as described in the section that follows:

**B. Implementation of FITs Will Not Address Many of the Market Barriers Cited in the FIT Report**

The FIT Report lists market barriers that are compromising the RPS program:

- Permitting and siting challenges.
- Transmission availability, timing, and cost allocation.
- Development risks, including securing site control and obtaining financing.
- Complexity of the RPS solicitation processes, including suitability of RPS solicitation processes for smaller projects.
- Lack of transparency.
- Contract failure, which may be caused by a wide variety of reasons, including over-aggressive bidding in solicitation processes.
- Cost changes during the project development process, which may cause some projects to become infeasible; such cost changes are often caused by external factors, ranging from whether federal tax credits will be extended to rising costs of equipment.
- Potential limitations on the availability of funds for any contract costs that are above the market price referent (MPR).<sup>6</sup>

---

<sup>6</sup> FIT Report, page 7.

It is important to recognize that implementation of FITs does nothing to resolve the most critical of the issues: Permitting and siting of renewable facilities and transmission are the same under both approaches. Issues associated with the flawed Market Price Referent (“MPR”) are also not addressed by FITs. While FITs may alleviate some development risks and reduce the potential for contract failure and cost changes, it does so by imposing all of those risks directly on ratepayers through non-bypassable charges. FITs will eliminate incentives for active risk management by renewable power developers. Finally, FITs that are undifferentiated by technology types and that pay the same rate regardless of term, will impede, rather than support, transparent price signals.

In short, FITs will do little to resolve any problems with the RPS, but will add new bureaucratic and administrative complexities to achievement of renewable goals. One of most vexing issues that is not addressed in the FIT Report is how the renewable energy supported by the FIT will be allocated to the various load serving entities within the footprint of the utility whose ratepayers pay for those costs. If the FITs are attributed solely to bundled utility customers, the ability for non-IOU retail suppliers to access renewable resources will likely become extremely limited, compromising, if not precluding, their ability to meet their RPS obligations. If the FITs are to be paid by all ratepayers in the utility footprint, there must be a mechanism that allows customers who are not served by the utilities to get their fair share of credit for the renewable energy, so that the ability to choose a competitive supplier is not at a competitive disadvantage.

### **C. Focus Should Remain on Implementing Reforms to the Existing RPS**

Existing environmental policy in California already calls for an expansion of renewable resources to 33% of energy use by 2020. There are efforts underway that may well make this

policy state law. The expansion of renewable energy use to this level will take the state into uncharted territory in terms of the need for extensive transmission infrastructure to ensure that the energy is delivered to energy consumers, and in terms of the need for extensive increases to ancillary services that will be needed to integrate the variability of many renewable resources into reliable grid operations. The command-and-control approaches embedded in the FIT Report will not enhance the existing RPS and will likely undermine it. FITs and RPS are not compatible approaches to achieving renewable goals, and both should not be employed.<sup>7</sup> Because the RPS approach is more market based, it will do a better job of supporting competition that will lead to technological innovation and efficiencies that will be necessary to achieve renewable goals at the lowest possible price to consumers. The bifurcated approach to renewable expansion that will occur if both FITs and RPS are employed will create market uncertainty that will ultimately stifle competition and with it, the innovation that is needed to solve the technological challenges that remain.

That is not to say that the existing RPS program cannot be improved. Indeed, it can and must be improved. As discussion of expanding the renewable goals from 20% to 33% continue, Constellation and AReM urge that reforms to the RPS program include the following features:

- **Implementation of the use of tradable Renewable Energy Credits (“RECs”) from within the west wide region for RPS compliance.** The use of RECs will provide price transparency that will facilitate investment in renewable resources.

---

<sup>7</sup> Indeed, it is worthwhile to note that in the European countries that employ FITs, there is no RPS, and therefore the context for any comparison of FIT implementation in California to the implementation that has occurred in Europe is fundamentally different. It does not appear that the analysis of the European approach has included any assessment of how those programs would be impacted by the introduction of an RPS. Constellation and AReM would presume that such an analysis would show that layering an RPS onto an established FIT program would be counterproductive and unnecessary.

- **Implementation of an alternative compliance payment in lieu of penalties.**

Given the expected shortfall of renewable energy resources needed for compliance in the short term, the existing regime of punitively high penalties should be replaced with an alternative compliance payment that provides an additional flexible compliance tool for retail providers. The Alternative Compliance Payment should be set at a level that is high enough so that it does not supplant direct investment in renewable resources.



### III. SUMMARY AND CONCLUSION

In summary, introduction of FITs will undermine, rather than complement, the existing RPS program, and therefore should not be pursued at this time. Instead, the Commission should work collaboratively with California Public Utilities Commission, the Legislature and Governor, and the California Independent System Operator to ensure that necessary reforms to the RPS are implemented.

Date: October 10, 2008

Respectfully submitted,



Mary Lynch  
Constellation Energy Commodities Group  
2377 Gold Meadow Way, Suite 100  
Gold River, CA 95670  
Telephone: (916) 526-2860  
Email: [Mary.Lynch@constellation.com](mailto:Mary.Lynch@constellation.com)

Andrew B. Brown  
Ellison, Schneider & Harris L.L.P.  
2015 H Street  
Sacramento, CA 95811  
Telephone: (916) 447-2166  
Fax: (916) 447-3512  
Email: [abb@eslawfirm.com](mailto:abb@eslawfirm.com)

Attorneys for Constellation Energy  
Commodities Group and Constellation  
NewEnergy, Inc.

Daniel W. Douglass  
Gregory S.G. Klatt  
Douglass & Liddell  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: (818) 961-3001  
Fax: (818) 961-3004  
Email: [douglass@energyattorney.com](mailto:douglass@energyattorney.com)  
[klatt@energyattorney.com](mailto:klatt@energyattorney.com)

Attorneys for the Alliance for Retail Energy  
Markets