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

Preparation of the *2009 Integrated Energy Policy Report Update* and the	**Docket No. 09-IEP-1G**
Implementation of Renewables Portfolio Standard Legislation	**Docket No. 03-RPS-1078** **RPS Proceeding**

COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND WESTERN POWER TRADING FORUM IN FOLLOW-UP TO THE MAY 28, 2009 WORKSHOP: *EXPLORING FEED-IN TARIFFS FOR RENEWABLE ENERGY PROJECTS OVER 20 MW.*

In the California Energy Commission's ("Commission") *Notice of Joint Integrated Energy Policy Report and Renewables Committee Workshop "Exploring Feed-in Tariffs for Renewable Energy Projects over 20 Megawatts"* ("Notice") the Commission has asked for market participant comments and responses to a series of questions related to the use of Feed-in Tariffs ("FITs") for renewable energy projects over 20 MW. The Alliance for Retail Energy Markets ("AReM")[1] and Western Power Trading Forum ("WPTF")[2] appreciate the opportunity to express their joint views on the use of FITs in follow up to the materials and discussion that occurred at the May 28, 2009, workshop ("May 28 Workshop" or "Workshop").

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[1] AReM is a California mutual benefit corporation whose members are 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 any individual member of AReM or the affiliates of its members with respect to the issues addressed herein.

[2] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

I. INTRODUCTION AND SUMMARY

On May 28, 2009, the Commission conducted the Workshop "to further evaluate feed-in tariffs for renewable energy projects over 20 megawatts (MW)."[3] During the workshop, several speakers presented background information on the use of FITs in other countries, a representative from Gainesville, Florida described that city's use of FITs to expand their renewable resource base and staff from the California Public Utilities Commission ("CPUC") reviewed the status of FITs for small scale projects. In addition, several panels were convened, including representatives of the Investor Owned Utilities ("IOU"), public utilities, and renewable developers, and environmental advocates to discuss the potential efficacy of FITs as a tool to increase California's progress toward meeting the renewable portfolio standard ("RPS") goals.

AReM and WPTF have, in proceedings conducted by both the Commission and by the CPUC expressed concern that the implementation of FITs will be counterproductive to meeting the goals of the RPS.[4] The discussion at the May 28 Workshop – focused on the potential for implementing FITS for projects over 20 MW – raises those concerns anew, as well as raising additional concerns with respect to digression pricing as the mechanism for developing FIT prices. The following is a summary of the concerns:

- The use of FITS, especially for resources over 20 MW, is not likely to be an "additional tool" for RPS compliance; rather FITs will undermine and supplant

[3] See Workshop Notice, page 1.

[4] Many of the comments submitted herein are drawn from the following earlier submissions: October 10, 2008 comments of Constellation Energy Commodities Group, Inc, Constellation NewEnergy, Inc, (collectively "Constellation") and Alliance for Retail Energy Markets on California Feed-in Tariff Design and Policy Options Report (submitted in Docket No. 08-IEP-1 and Docket no. 03-RPS-1078 ("Constellation-AReM 10/10/08 Comments"), and the December 11, 2008 comments of the Western Power Trading Forum, and the Alliance for Retail Energy Markets on the California Feed-in Tariff Design and Policy Options Report, submitted in Docket No. 09-IEP-1G and Docket No. 03-RPS-1078 ("WPTF-AReM 12-11-08 Comments").

market based approaches, and likely become the "only tool," deterring innovation and wholesale market competition.

- The implementation of FITs for facilities over 20 MW using the "degressive" FIT pricing will result in ever-increasing stranded costs for consumers, and as such will compromise the re-emergence of retail competition in California.
- The fundamental issues associated with renewable resource development are cumbersome siting processes and lack of transmission; the implementation of FITs will have no impact on resolving those issues

AReM and WPTF strongly urge the Commission to reject the notion that FITs are necessary for facilities over 20 MW; instead the Commission should focus its efforts and influence to secure the success of the RPS by moving forward with RPS reform as discussed in Section III below.

AReM and WPTF explain in more detail below why they believe that FITS, particularly for resources over 20MW, should not be implemented. With respect to the questions posed in Attachment A to the Notice, the discussion in these comments is responsive to Question #2 – whether FITs will help address financing issues for renewable resources over 20 MW, and Question #5 on degression pricing.

II. COMMENTS

A. FITs will not serve as an "additional tool" for meeting the RPS; instead, they will undermine and supplant market-based approaches, deterring innovation and compromising wholesale market competition.

Slide 24 of the presentation entitled "Feed-in Tariff Design Implications for Financing of Renewable Energy Projects Over 20 MW" prepared by KEMA, Inc., Deacon Harbor Financial, L.P., Meister Consultants Group, Inc. and Sustainable Energy Advantage, LLC ("KEMA Presentation") addresses issues relative to the interaction of RPS with FITs over 20 MW. It says:

Issues with contemporaneous applicability:

- Could create additional opportunities for developers between RPS cycles without detracting from RPS solicitations, or
- Could result in projects gravitating toward whichever avenue – FIT or requests for offers (RFOs) – offered more lucrative contracts, to the exclusion of the other
- Where technology-specific FIT price is higher, this is a policy decision to encourage that technology beyond the level under RFO

When FIT might be below an RFO price outcome (MPR), developers might either participate in RFO-only, or prefer the terms and conditions and avoided transaction costs, and certainty of FIT even if price might be lower than a possible RFO contract priceAReM and WPTF urge the Commission to recognize that it is highly unlikely that FITs will, as the first bullet on this slide suggests, create additional opportunities for developers between RPS cycles without detracting from RPS solicitations. It is simply not feasible to expect investors to put dollars at risk through merchant investment when there is regular and recurring opportunity to avoid those risks through FITs. A much more likely outcome is that investors will, as the subsequent slides indicate, gravitate to the mechanism that offers the highest price with the least risk. Given the relatively risk free nature of the FIT, it is realistic to expect that most investors will prefer that mechanism over a competitive bidding approach.

The inherent incompatibility of an FIT approach with the existing market based RPS approach brings into sharp focus a statement included on slide 13 of the KEMA Presentation "Investor confidence is determined by both price and policy certainty." Indeed, the need for policy certainty was echoed by nearly all of the May 28 Workshop panelists who reiterated that a key component of a successful regulatory framework to encourage renewable resource development is regulatory certainty and market stability.

AReM and WPTF concur with these statements. Regulatory certainty and market stability would indeed be important for the success of an FIT approach, and they are equally essential for the success of the existing RPS program that relies on competitive market forces and competitive procurement to determine the most efficient and economic resources. Thus, the very certainty needed for the success of an FIT program will create an equal, but opposite, degree of uncertainty for the existing RPS program. In short, there is no evidence to suggest that an RPS program that relies on market based tools, such as tradable renewable energy credits ("TRECs"), will "co-exist" with a regulatory framework that provides FITs to renewable developers.

Regulatory certainty is not achieved by experimentation. It is achieved by careful attention to fundamental principles and course corrections that are consistent with those principles, rather than antithetical to them. Policies that encourage the development of markets that allow developers and end users to manage the risks of their investment will not be successful when they are undermined by policies that implement tariff rate structures that saddle end use customers with development and operating risks. It is imperative that the Commission recognize this basic premise – that FITs, especially for facilities that are 20 MW and larger, are an alternative to existing RPS policies, not an enhancement to them. Should California policymakers choose the FIT approach to resource development, it will create a level of market uncertainty that will preclude other forms of renewable resource investment.[5]

[5] Please see the WPTF-AReM 12/11/08 Comments for additional discussion of competitive market issues raised by FITs.

B. The implementation of FITs for facilities over 20 MW using the degression FIT pricing will result in ever-increasing stranded costs for consumers, and as such will compromise the re-emergence of retail competition in California.

The KEMA Presentation and the presentation prepared by Toby B. Couture entitled: *Renewable Energy Feed-in Tariffs: An Analytical View* ("Couture Presentation") reviewed the practice of including built in decreased payments, called degression, pursuant to which each annual vintage of FITs sets a tariff price that is lower than the prior vintage tariff price. The Couture Presentation states that degressive pricing will "drive innovation and cost reduction over time."[6] The KEMA Presentation notes that "If degression required, it is subject to periodic adjustments based on current market conditions (supply & demand, capital cost, financing cost, etc.)."[7]

AReM and WPTF are concerned that degression pricing will do nothing more than ensure California is saddled with a mechanism that guarantees stranded costs. If each vintage of FIT must cost less than the prior vintage, each prior vintage by definition has stranded costs embedded in it. Those stranded costs must be borne by ratepayers for the remaining term of the tariff, and will serve to do little more than limit their competitive choices.

C. The fundamental issues associated with renewable resource development are cumbersome siting processes and lack of transmission; the implementation of FITs will have no impact on resolving those issues.

The report prepared for the Commission entitled *California Feed-In Tariff Design and Policy Options Report,* listed barriers that are compromising the effectiveness of California's RPS Program, including among other things, permitting and siting challenges, lack of transmission, development risk, RPS solicitation complexities, contract failure, and lack of funds

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[6] See slide 15 of the Couture Presentation.

[7] See Slide 16 of the KEMA presentation.

for pay for resources that have costs above the market price referent. The Constellation-AReM 10/10/08 Comments noted that

> 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.
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> 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.[8]

These comments are reiterated here because they bear repeating as the Commission considers the expanded use of FITs for facilities over 20 MW**.**

III. Focus Should Remain on Implementing Reforms to the Existing RPS

As noted in the WPTF-AReM 12/11/08 Comments, "WPTF and AReM strongly believe that the competitive framework embedded in the existing RPS is the most efficient and fair way to promote renewable development in California." These comments urged the Commission to "focus on changes to the existing procurement process to increase the likelihood that projects

[8] See Constellation-AReM comments, dated 10/10/08, page 6.

chosen for procurement will actually get built."[9] Among the specific elements of RPS in need of reform, WPTF and AReM included the following:

- Implementing measures to assess the feasibility and viability of projects;
- More frequent RFOs; and
- Reducing the time between project bid and project approval.

These types of reforms are under consideration in two separate CPUC proceedings: R08-02-007 (the Long Term Procurement Plan proceeding) and R08-08-009 (the RPS proceeding).

Likewise, the Constellation-AReM 10/10/08 Comments reiterated specific elements that, when adopted, would increase the success of the existing RPS, including:

- Implementation of TRECS to increase and facilitate investment in renewable resources and improve price transparency
- Implementation of an alternative compliance payment in lieu of penalties in order to avoid the current punitive penalties and increase compliance flexibility.

AReM and WPTF respectfully incorporate both these sets of comments by reference.

[9] See WPTF-AReM comments date 12/11/08, page 5

IV. CONCLUSION

In summary, introduction of FITs, especially for facilities over 20 MW, 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 CPUC, the Legislature and Governor, and the California Independent System Operator to ensure that necessary reforms to the RPS are implemented.

AREM and WPTF thank the Commission for its attention to these comments.

Respectfully submitted,

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June 11, 2009