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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to  
Continue Implementation and  
Administration of California Renewables  
Portfolio Standard Program.

Rulemaking R.08-08-009

**BRIEF OF THE GREEN POWER INSTITUTE  
AND SUSTAINABLE CONSERVATION ON  
ASSIGNED COMMISSIONER'S RULING ON FEED-IN TARIFF PRICES**

June 18, 2009

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**BRIEF OF THE GREEN POWER INSTITUTE  
AND SUSTAINABLE CONSERVATION ON  
ASSIGNED COMMISSIONER'S RULING ON FEED-IN TARIFF PRICES**

**Introduction**

Pursuant to the May 28, 2009, *Administrative Law Judge's Ruling Regarding Briefs on Jurisdiction in the Setting of Prices for a Feed-In Tariff*, the Green Power Institute (GPI) and Sustainable Conservation (SC) hereby jointly submit this *Brief of the Green Power Institute and Sustainable Conservation on Assigned Commissioner's Ruling on Feed-In Tariff Prices*, in Proceeding R-08-08-009, **Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program**. We address two issues: the authority of the PUC to set Feed-In Tariffs (FIT) prices, and the basis for the setting of FIT tariff prices.

**Authority of the PUC to Set Contract Prices**

The Green Power Institute and Sustainable Conservation do not provide legal advice or opinions, and we do not do so here. However, it appears to us to be self-evident that the California Public Utilities Commission has the jurisdiction to approve prices and other terms and conditions for power-purchase agreements between the IOUs and their suppliers. Indeed, that is one of the Commission's primary responsibilities. In terms of the RPS program, the Commission already and routinely approves contracts resulting from RPS solicitations, bilateral contracts, and FIT contracts for small generators (up to 1.5 MW). Should the FIT program be extended to generators larger than 1.5 MW, we see no logical or rational reason why the Commission would not have the authority to approve tariff rates and other terms and conditions for these contracts.

The GPI and SC disagree with SCE's argument regarding the scope of the Commission's price-setting authority in an expanded FIT program. As we read it, SCE's opinion pertains to interstate commerce, and thus would not, in any case, apply to renewable

generators located in California. Regardless, there is no doubt that the Commission has the authority to set prices for bilateral contracts, and in our opinion FITs are essentially equivalent to a standardized version of bilateral contracts. One of the Commission's charges is to determine just-and-reasonable rates for power-purchase contracts entered into by the regulated utilities, and this should be the standard for setting tariff rates for FIT contracts for projects of all sizes and types.

### **Basis for Setting FIT Prices for Renewables**

There are two different basic approaches that can be used in setting tariff rates for FITs. The first approach is to base the rate on the avoided cost of conventional energy generation, with the option of including a green-energy adder in the tariff rate. The second approach is to base the rate on the cost of green-energy production, which can be differentiated by renewable resource in order to encourage resource diversity in the RPS program. The approach that has been employed in California for the existing FIT program for small generators is the first approach without a green adder, using the MPR as a proxy for the cost of conventional power generation. These MPR-based offers have elicited a rather limited response from the marketplace, with only a few contracts signed. The far more successful European FIT programs have taken the second approach to setting rates, basing them on the cost of renewable-power generation.

If the Commission decides to continue following the first approach as it expands its FIT programs, that is using the MPR as the basis for the cost of brown energy, then we believe that it is essential to include a proper green adder in the tariff price. In a recent Proposed Decision (May 5, 2009) in this docket, the PD proposes to add a renewable adder to the market price in order to set a price benchmark for very short-term PPAs qualifying for tier-2-advice-letter treatment. In the opinion of the GPI and SC, the time has come to incorporate a proper green adder into the MPR used for competitive RPS solicitations, and into any tariff rates it sets in the existing and expanding FIT program. The small component in the current MPR representing the future cost of CO<sub>2</sub>-emissions permits is not a proper green adder.

The GPI and SC strongly prefer the second option, setting FIT tariff rates based on the calculated cost of renewable-power generation, differentiated by resource-type and size of generating units, as appropriate. Basing the tariff on the cost of renewable-power generation ensures that the contracts will provide revenues that are sufficient to make the projects viable, but do not allow for excessive profits. We note that FIT rates based on the cost of renewable-power generation do not need a green adder, which removes that as an issue from the tariff-rate-setting process.

The Commission has abundant experience with calculating the cost of power generation from a variety of resources. It is done routinely in the RPS program in the form of the annual determination of the MPR (cost of generation using natural gas), and was done recently by RETI for a variety of renewable-energy-generating options. In addition other public entities, including the CEC, NREL, DOE, and some of the national energy labs have also calculated and published the cost of power generation from renewable resources in recent years. The computational algorithms for determining the cost of power generation from renewable resources are well known. The most challenging part of the process is assembling an up-to-date dataset. FITs based on the cost of renewable-power generation will provide much more predictable and stable rates over time than a program based on the cost of power generation from natural gas.

## **Conclusion**

We believe that it is self-evident that the California Public Utilities Commission has the jurisdiction to set rates and approve power purchase agreements for the investor-owned utilities in California. This authority logically extends to the setting of rates for FIT contracts for renewable-energy generators. The preferred approach to setting FIT-contract rates is to base the rates on the cost of renewable-energy generation. Contracts based on the cost of generation will provide contracts that are financable, at prices that are fair to both ratepayers and developers. If instead the Commission prefers to continue basing FIT rates on the MPR or any other market-price benchmark, then the time has come to include an proper green adder in the FIT-tariff rate.

Dated June 18, 2009, at Berkeley, California.

Respectfully Submitted,



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VERIFICATION

I, Gregory Morris, am Director of the Green Power Institute, and a Research Affiliate of the Pacific Institute for Studies in Development, Environment, and Security. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Brief of the Green Power Institute and Sustainable Conservation on Assigned Commissioner's Ruling on Feed-In Tariff Prices*, filed in R.08-08-009, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on June 18, 2009, at Berkeley, California.



Gregory Morris

VERIFICATION

I, Jody London, am an independent consultant representing Sustainable Conservation in this case. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Brief of the Green Power Institute and Sustainable Conservation on Assigned Commissioner's Ruling on Feed-In Tariff Prices*, filed in R.08-08-009, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on June 18, 2009, in Oakland, California.

A handwritten signature in blue ink that reads "Jody London". The signature is written in a cursive style with a long horizontal flourish at the end.

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Jody London

PROOF OF SERVICE

I hereby certify that on June 22, 2009, in Berkeley, CA, I have served a copy BRIEF OF THE GREEN POWER INSTITUTE AND SUSTAINABLE CONSERVATION ON ASSIGNED COMMISSIONER'S RULING ON FEED-IN TARIFF PRICES, upon all parties listed on the Service List for this proceeding, R-08-08-009. All parties have been served by email or first class mail, in accordance with Commission Rules.



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Gregory Morris