

WSGR ALERT

JULY 2011

CALIFORNIA PUBLIC UTILITIES COMMISSION FAST TRACKS REVISIONS TO 399.20 TARIFF PROGRAM AND DEFINITION OF "MARKET PRICE," REQUESTS STAKEHOLDER COMMENTS

California's Senate Bill 2 1X (SB 2 1X) recently adopted a 33% by 2020 Renewables Portfolio Standard (RPS), as discussed in our April 21, 2011, WSGR Alert, "California Adopts Aggressive Renewables Portfolio Standard."¹ In addition to some of SB 2 1X's other alterations to the RPS, the California Public Utilities Commission has targeted revisions to the Public Utilities Code Section 399.20 program for implementation by the end of 2011. As described below, the 399.20 program requires California's investor-owned utilities (IOUs) to offer a standard tariff for power purchases from renewable energy facilities generating 3 MW of energy or less. As part of this implementation, one of the Administrative Law Judges responsible for the implementation and administration of the RPS by the Commission issued a ruling setting forth a proposal and requesting stakeholder comments on how the term "market price," as used in the 399.20 program, should be understood.

Summary of the 399.20 Program

The 399.20 program initially was enacted by AB 1969, and it required the IOUs to offer a special tariff under which they would purchase electricity from electric generation facilities that were (a) not more than 1.5 MW in size and (b) owned and operated by a public water or wastewater agency; further, the IOUs were only required to enter into

contracts under the tariff until they had obtained their "proportionate share" of a 250 MW overall procurement cap. Changes to the 399.20 program, including those in AB 32 (which mandated a greenhouse gas inventory and reduction program for California), SB 2 1X, and other laws have increased the project cap to 3 MW, removed the requirement that the tariff only be offered to water or wastewater agencies, and increased the overall procurement cap to 750 MW. The Commission is seeking interested party comments on how best to implement these changes and determine the "market price" that must be offered to facility owners and operators under the 399.20 program tariff.

"Market Price"

Previously, the price offered under the 399.20 program was tied to the Market Price Referent (MPR). Prior to SB 2 1X, the MPR was used to establish a limit on the procurement obligations of the IOUs under the RPS program. SB 2 1X has eliminated the statutory language that gave rise to the MPR, and instead requires that the Commission establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the RPS. With regard to determining the price for the tariff under the 399.20 program, and in the absence of the MPR, SB 2 1X requires the Commission to

investigate: (1) the "market price" of electricity; (2) the long-term market price for fixed-price electricity contracts; (3) long-term operating and fuel costs of new electricity generating facilities; (4) the value of different electricity products (i.e., baseload, peaking, as available); (5) what the price should be per kilowatt-hour over 10-, 15-, and 20-year contract terms; (6) how to ensure that ratepayers are indifferent as to whether the tariff applies to them; and (7) the current and anticipated costs of environmental compliance relating to tariff projects.

Key among these is determining what Section 399.20 means when it refers to the "market price" of electricity. The Commission is specifically soliciting comments on this issue, and in particular is looking for stakeholder opinions on whether there should be one market price of electricity or varying market prices "depending on the type of electricity that is being procured," including variations based on the technology used to generate the electricity. In addressing this issue, a number of parties have previously commented that the Commission should continue use of the MPR despite not being required to do so; the Commission thus seeks comment on the continued use of the MPR. Various other market pricing proposals have been advanced, including rates that vary based on the product being delivered (e.g., firm, non-firm peaking, non-firm non-peaking); a

¹ The WSGR Alert is available at http://www.wsg.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgalert_CA_Adopts_Renewables_Standard.htm.

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market-based rate determined by a competitive auction; and a rate based on the contract prices found in power purchase agreements.

Procedures for Submitting Comments

The Administrative Law Judge has requested written comments on the ruling, which is available on the Commission's website.² This ruling contains 28 specific areas in which the Commission has requested stakeholder input, as well as guidance on the specific input the Commission is most interested in receiving for each. Note that there is no requirement that parties respond to all 28 areas.

Initial comments must be filed with the Commission on or before July 21, 2011; reply comments must be filed on or before July 28, 2011.

Wilson Sonsini Goodrich & Rosati constantly monitors the work of the Commission as it affects our energy and clean technology clients. If your company is interested in submitting comments on the ruling, or would like further analysis of California's RPS, the 399.20 program, or any other aspect of the Commission's regulatory efforts, please contact Todd Glass, Sheridan Pauker, or Keene O'Connor in Wilson Sonsini Goodrich & Rosati's energy and clean technology practice.

² The ruling is available at <http://docs.cpuc.ca.gov/EFILE/RULINGS/138055.PDF>.



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