STATE OF CALIFORNIA — Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 20, 2011

To: The Commission
(Meeting of June 23, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **S 3923 (Sanders) – Feed-in Tariffs**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: **SUPPORT IF AMENDED**

SUMMARY OF BILL:

S 3923, introduced in the last U.S. Congress (111th), would give states the express authority to establish the wholesale prices for their investor-owned utilities' (IOUs) purchases of electricity procured pursuant to a state-approved production incentive program, from renewable energy sources in addition to the current state authority under the avoided cost framework of the federal Public Utility Regulatory Polices Act (PURPA).

The author intends to reintroduce the language of S 3923 into a new bill this Congress and has already indicated a willingness to include combined heat and power (CHP) applications, as suggested below.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

As a general rule, under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) has authority to regulate wholesale sales of electricity, and states have the authority to regulate retail electric prices. PURPA provides an exception to this rule under which states have the ability to require utilities to procure energy from "Qualifying Facilities" (QFs) at a price not to exceed the utilities' avoided cost.

In 2009, the California Public Utilities Commission (CPUC) adopted D.09-12-042 pursuant to AB 1613 (Blakeslee, 2007), which established a feed-in tariff to support the deployment of CHP applications. Under the terms of this decision, the IOUs were directed to procure energy from eligible facilities at a price based on the cost of energy produced by a new combined cycle natural gas turbine. In October 2010, the FERC issued an order granting the CPUC's request for clarification regarding the nature and

extent of state discretion in determining avoided cost. In that order, FERC indicated that states have considerable flexibility to determine avoided cost and that, in exercising this discretion, they could establish multiple avoided costs reflecting a "multi-tiered resource approach….which would set different levels of avoided costs and thus different avoided cost rate caps for different types of resources."[1]

Despite this flexibility, as a practical matter, states may be interested in supporting certain generating technologies via policies like feed-in tariffs, which may prove difficult to implement under the avoided cost framework. For example, for those technologies that are subject to technology risks, or that have not achieved sufficient economies of scale, the price that can be justified on an avoided cost basis may not be adequate to drive deployment. Given the pressing need for state level action to address climate change and the variety of low or zero emission technologies that can contribute to this objective, states should be authorized to regulate wholesale prices to promote these technologies to the extent that the purchasing entities are within the state (e.g., the IOUs, municipalities or other entities selling electricity to retail customers). .

Passage of the bill would provide a second means, in addition to the current avoided cost regime under PURPA, which would be available for a state to exercise authority to help foster additional market opportunities for renewable technologies and in so doing would support the policy goals of California to reduce greenhouse gas emissions, as embodied by AB 32. To the extent that other states find it easier to adopt feed-in tariffs under the language in S 3923, than under PURPA, it could also help promote economic development in California by creating more market demand for clean generation technologies manufactured in California, by providing additional markets to sell these technologies into.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill as drafted is narrowly tailored to promote clean generation technologies by giving states direct authority to establish wholesale prices for their IOUs' energy procurement from renewable energy. The CPUC fully supports the goal of S 3923, to provide a simpler alternative to the avoided cost approach under PURPA. However, rather than limit this discretionary authority to renewable technologies, it should be broadened to also include CHP applications provided such applications are net greenhouse gas reducing. Specific language amendments are provided below:

> (1) DEFINITION OF STATE-APPROVED PRODUCTION INCENTIVE PROGRAM.—In this subsection, the term 'State-approved production incentive program' means a requirement imposed pursuant to State law, or by a State regulatory authority acting within the authority of the State regulatory authority under State law, that an electric utility purchase renewable energy (as defined in section 609(a)), or energy <u>produced from a combined heat and power generation facility provided the combined heat and power generation facility is net greenhouse gas emission reducing</u> at a specified rate.

[1] FERC Press Release, October 21, 2010; Docket Nos. EL10-64-001 and EL10-66-001

> (2) RATES.—Notwithstanding any other provision of this Act or the Federal Power Act (16 U.S.C. 791a et seq.), a State legislature or regulatory authority may set the rates for a sale of electric energy by a facility generating electric energy from renewable energy sources, or combined heat and power generation facility pursuant to a State approved production incentive program under which the facility voluntarily sells electric energy.''

In addition to these specific amendments, the author should also consider whether the bill might provide a vehicle to broaden the definition of eligible technology for the State-approved production incentive program to encompass certain emerging low emission generating technologies beyond renewable and combined heat and power generating technologies. For example, Carbon Capture and Storage could also be included as eligible technology to the extent it could contribute to the reduction of greenhouse gas emissions. We believe expanding the definition in a manner consistent with this concept would be helpful in further facilitating California's goals vis-à-vis climate change.

DIVISION ANALYSIS (Energy Division):

Currently, California has a number of laws and programs supporting renewable and CHP development. Among these various programs, feed-in tariffs represent a relatively new policy tool. AB 1969 (Yee, 2006) established a feed-in tariff for renewable generation up to 1.5 megawatts in size located on publicly owned water and waste-water treatment facilities. In implementing this legislation, the CPUC expanded the availability of the program to generation deployed beyond publicly owned water and waste-water treatment properties.

AB 1613 established a feed-in tariff to support the deployment of CHP applications, and in 2010, the Legislature passed SB 32 (Negrete McLeod, 2009) which, in effect, expanded AB 1969 to include facilities up to 3 megawatts in size, increased the capacity targets, and the provided additional direction on the pricing to be offered under this program. A proceeding is current underway to implement SB 32.

To a degree, feed-in tariff programs have faced opposition from the utilities. In their pleadings seeking recourse regarding programs implemented to date, the utilities have relied, in part, on the argument that the pricing established under each of these programs exceeds avoided cost. Although the FERC has determined that the CPUC has considerable flexibility in how it calculates avoided cost, and the CPUC is moving forward accordingly, federal legislation that simply provides direct state authority over the wholesale prices that the utilities may offer under their procurement programs targeting renewable and CHP generation would give state utility commissions and the legislatures freer reign to establish such programs going forward.

Federal legislation would also facilitate the adoption of programs supporting renewable and CHP development in other states by simplifying their regulatory authority, so that

they, too, would have an alternative to PURPA's avoided cost methodology and instead allow states to adopt programs based on the specific pricing needs of the technology. Even though the CPUC generally prefers pricing to be determined by the market via a competitive process, for certain emerging, or small scale (i.e. distributed) technologies, administratively-determined pricing may be appropriate. From a policy standpoint, the CPUC is supportive of efforts that facilitate greater adoption of low- and zero-emission technologies in other states given the public nature of greenhouse gas emissions on the global climate system. In addition, it may foster economic opportunities by creating more demand for clean generation technologies developed and manufactured in California.

SUPPORT/OPPOSITION:

Unknown.

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BILL LANGUAGE:

S 3923 IS

111th CONGRESS

2d Session

S. 3923

To amend the Public Utility Regulatory Policies Act of 1978 to clarify the authority of States to adopt renewable energy incentives.

IN THE SENATE OF THE UNITED STATES

September 29, 2010

Mr. SANDERS (for himself, Mr. HARKIN, Mr. WHITEHOUSE, Mr. LEAHY, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to clarify the authority of States to adopt renewable energy incentives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Let the States Innovate on Sustainable Energy Act of 2010'.

SEC. 2. CLARIFICATION OF STATE AUTHORITY TO ADOPT RENEWABLE ENERGY INCENTIVES.

Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended by adding at the end the following:

'(o) Clarification of State Authority To Adopt Renewable Energy Incentives-

'(1) DEFINITION OF STATE-APPROVED PRODUCTION INCENTIVE PROGRAM- In this subsection, the term 'State-approved production incentive program' means a requirement imposed pursuant to State law, or by a State regulatory authority acting within the authority of the State regulatory authority under State law, that an electric utility purchase renewable energy (as defined in section 609(a)) at a specified rate.

'(2) RATES- Notwithstanding any other provision of this Act or the Federal Power Act (16 U.S.C. 791a et seq.), a State legislature or regulatory authority may set the rates for a sale of electric energy by a facility generating electric energy from renewable energy sources pursuant to a State-approved production incentive program under which the facility voluntarily sells electric energy.'.