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 11-05-005 (Filed May 5, 2011)

THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS TO SECTION. 399.20 RULING ISSUED JUNE 27, 2011

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I. INTRODUCTION

Pursuant to Administrative Law Judge Burt Mattson's July 15, 2011 ruling granting an extension of time, the Division of Ratepayer Advocates (DRA) hereby submits these Reply Comments addressing issues set forth in the June 27, 2011 *Administrative Law Judge's Ruling Setting Forth Implementation Proposal for SB 32 and SB 2 1X Amendments to Section 399.20* (Jun 27, 2011 Ruling). DRA provides these Reply Comments in response to the July 21, 2011 Opening Comments submitted by 20 parties including the investor-owned utilities (IOUs) of Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). DRA's responses follow in the same order as issues posed in the June 27, 2011 Ruling.

II. DISCUSSION

A. Price

i. DRA Recommends the Commission Adopt the Net Surplus Compensation Rate for the SB 32/Feed-in Tariff Program

Section 399.20(d) of the Public Utilities Code as amended by SB 2 1X includes a list of attributes that must be included in any pricing mechanism adopted by the Commission for the implementation of Senate Bill (SB) 32, the Feed-in tariff (FiT) program. In the Opening Comments submitted on July 21, 2011, DRA recommended that the Commission adopt the Net Surplus Compensation (NSC) rate as the pricing mechanism for SB 32 as this metric contains all of the attributes as described in Section 399.20(d)(1). DRA finds that this pricing mechanism brings value to the three IOUs as well as potential SB 32/FiT program participants while adhering to the ratepayer indifference clause of Section 399.20(d)(3).

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ii. The Net Surplus Compensation Rate Reflects the Market Price of Electricity in California and Includes a Value for Environmental Cost

In D. 11-06-016, the *Decision Adopting Net Surplus Compensation Rate Pursuant to Assembly Bill 920 and the Public Utility Regulatory Policies Act of 1978*, the Commission adopted a Net Surplus Compensation rate to compensate Net Energy Metering program (NEM) customers for excess electricity produced. The Commission found that this rate represents the fair market value of electricity in the IOUs' service territories while complying with the Federal Energy Regulatory Commission's (FERC) avoided cost mandate. DRA concurs with the Commission's findings and sees three main reasons why the Commission should apply this pricing mechanism to the SB 32/FiT program.

Firstly, the NSC rate is derived from an hourly day-ahead electricity market price or "default load aggregation point" (DLAP) and includes a payment for the value of the renewable attributes of the electricity produced from a renewable facility. Per the decision and Resolution E-4422, the NSC rate is calculated monthly as a simple rolling average of each IOUs' (SCE, PG&E, and SDG&E) DLAP price from 7 am to 5 pm over a 12-month period.[1] DRA recommends that for the SB 32/FiT program price, the Commission apply the NSC rate that is calculated from January to January of each year to provide one consistent tariff rate for each program year.[2] Since the NSC rate is based on the day-ahead market price, it not only meets the requirements of Section 399.20(d)(1) that the price of the SB 32 tariff be a market price, but complies with the FERC's mandate on avoided cost. In D.11-06-016 the Commission summarized the NSC rate's conformity with the FERC's avoided cost mandate and ratepayer indifference requirement:

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[1] Decision 11-06-016, the *Decision Adopting Net Surplus Compensation Rate Pursuant to Assembly Bill 920 and the Public Utility Regulatory Policies Act of 1978*, p. 27 and Resolution E-4422, p. 5.

[2] Per Resolution E-4422 on page 6, the average 12-month (January 2010 – January 2011) NSC rate in $/kWh for PG&E is $0.040; $0.039 for SCE and $0.039 for SDG&E.

> The avoided cost approach [NSC rate] reflects the incremental cost the utility avoids by receiving surplus generation from NEM customers. Such an avoided cost complies with PURPA and the mandate of Section 2827(h)(4)(A-B) that the adopted rate be just and reasonable, leave other ratepayers unaffected, and not shift costs between solar customer-generators and other bundled service customers.[3]

In addition to the benefit of using the NSC rate as presented above, the NSC rate also includes a component to account for environmental compliance costs. The NSC rate price is actually the combination of two components; the DLAP "brown power" price and the renewable attribute or renewable energy credit (REC) price component to account for the environmental attributes associated with energy produced from renewable resources. The REC/renewable premium price component of the NSC rate used for the SB 32/FiT program would be calculated on a yearly basis (January to January) using the Department of Energy's (DOE) data on renewable premiums for the Western Electric Coordinating Council (WECC). The most recent average price of a renewable premium is $18.30/MW-hour.[4] This pricing structure is akin to that of many long-term contracts signed by the IOUs that include a variable, market based rate for the "brown power" on top of a renewable premium to account for the attributes of the renewable energy. With this renewable premium adder, the NSC rate fulfills the requirements of Section 399.20(d)(1) that the rate be a market rate.[5]

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[3] Decision 11-06-016, the *Decision Adopting Net Surplus Compensation Rate Pursuant to Assembly Bill 920 and the Public Utility Regulatory Policies Act of 1978*, p. 26.

[4] A.10-03-001: *Proposal and Sample Calculations for a Net Surplus Compensation Rate of Southern California Edison Company,* Attachment A, A-2.

[5] §399.20 (d) (1) reads "The tariff shall provide for payment for every kilowatt hour of electricity purchased from an electric generation facility for a period of 10, 15, or 20 years, as authorized by the Commission. The payment shall be the market price determined by the commission pursuant to ~~Section 399.15~~ *paragraph (2)* and shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located."

Finally, both components of this pricing structure—the DLAP and REC/renewable premium price—are publicly available and transparent to all current and future SB 32/FiT participants. DLAP prices are published on CAISO's website daily[6] and prices for the various voluntary green energy programs that form the aggregate REC/renewable premium price are found on the DOE's website.[7] Since both price components are already calculated by the Commission for the NEM program, this approach eliminates the need for the Commission to recalculate yet another program price on a daily, monthly, quarterly, or even yearly basis.

The Commission's rationale for adopting the NSC rate in D.11-06-016 parallels many of the qualities the Commission is now seeking in a pricing mechanism for SB 32. For these reasons DRA recommends the Commission apply this pricing mechanism to the SB 32/FiT program as well. DRA finds this approach complies with both Sections 399.20(d)(1) and 399.20(d)(3) while allowing for public access to the tariff rate.[8]

iii. The Commission Should Not Adopt a Pricing Mechanism Based on the MPR

As stated in its Opening Comments, although DRA supported using the Commission-calculated market-price referent (MPR) as the SB 32/FiT price mechanism in the past, DRA now advocates for the use of the NSC rate as adopted in D.11-06-016. DRA finds that continuing to rely on the MPR as the pricing mechanism for the FiT program presents many issues.

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[6] See http://oasis.caiso.com/mrtu-oasis/?doframe=true&serverurl=http%3a%2f%2farptp10%2eoa%2ecaiso%2ecom%3a8000&volume=OASIS.

[7] In SCE's *Prepared Testimony Supporting Application Proposing a Net Surplus Compensation Rate Pursuant to Assembly Bill 920* (SCE 3/15/2010, Exhibit SCE-1), SCE states that the $18.30/MWh is derived from the pricing points of 88 voluntary green energy programs within the WECC. The 88 voluntary green energy programs and current prices can be found here: http://www.eere.energy.gov/greenpower/markets/pricing.shtml?page=1. This green component pricing mechanism to DRA's proposal is an aggregate of these 88 data points.

[8] §399.20(d) (3) reads "The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff."

First, it is unclear at this time whether or not the MPR will be calculated in the years following 2011. If it is not calculated beyond 2011, the Commission would have to revisit the SB 32/FiT program pricing issue at a future point in time which would be time consuming and may hinder the overall effectiveness of the program. There is also the unresolved issue of FERC's mandate on avoided cost and the Commission's authority to set the tariff price. Some parties have argued that the MPR does not represent the true avoided cost or the next incremental cost of energy procured in California and therefore violates FERC mandates on avoided cost. In D.11-06-016, the Commission rejected a proposal by the Joint Solar Parties' to adopt the MPR as the NEM's surplus compensation rate:

> The MPR represents the cost to construct, operate and maintain a 500 MW combined cycle gas turbine and we do not believe that surplus generation from NEM customers will result in avoided procurement from such a facility. Rather we find that surplus generation from NEM customers is more likely to avoid short term wholesale purchases by the utilities."[9]

Using the NSC rate for the SB 32 Fit program would eliminate uncertainty regarding whether using the MPR as the avoided cost in this context is consistent with FERC requirements, and would also promote consistency among different renewables programs. DRA supports streamlining the renewables programs as much as possible. Establishing the same rate for the SB 32/FiT program and NEM program takes an important step in that direction since the large number of existing renewables programs—some of which overlap—may incentivize participants to "forum shop." Since a participant may enlist one renewable project under several programs, it is encouraged to enroll in the program that generates the highest profit. This dynamic does not advance the interest of ratepayers in achieving compliance with the RPS goals at the lowest overall cost and does not provide clear consistent policy to market participants. Thus,

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[9] Decision 11-06-016, the *Decision Adopting Net Surplus Compensation Rate Pursuant to Assembly Bill 920 and the Public Utility Regulatory Policies Act of 1978*, p. 33.

paying participants of both the FiT and NEM the same rate for their generated electricity—given that at least some are eligible to enroll in either—provides a consistent signal on how much that electricity is worth to ratepayers.

iv. **<u>The Commission Should Not Adopt a Pricing Mechanism Based on the Results of the Renewable Auction Mechanism</u>**

Although DRA supports the Commission's Renewable Auction Mechanism (RAM) program for smaller –20 megawatt and under— sized renewable facilities, DRA does not support a pricing mechanism for the SB 32/FiT program that would be derived from the results of the RAM auction as the Interstate Renewable Energy Council proposes.[10] Relying on the RAM auction results does not provide potential customers with price certainty which is the foundation of a FiT program. This in turn could impact program participation or the ability of these developers to secure necessary financing for their projects. A better solution would be for the Commission to use the market-based NSC rate based on the DLAP prices that are publicly available and accessible to all on CAISO's OASIS website.

v. **<u>The Commission Should Not Adopt a Pricing Mechanism That is Technology Specific</u>**

In the July 21, 2011 comments many parties advocated for a technology-specific pricing mechanism for the SB 32/FiT program.[11] These parties argued that technology-specific rates comply with Public Utilities Code 399.20 and that each renewable technology has a different value proposition. There are several flaws in this argument; primarily, that this proposal conflicts with the market based rate requirement of Section 399.20(d)(1) as well as the ratepayer indifference clause of Section 399.20(d)(3). Due to these conflicts with Section 399.20(d)(1) and (d)(3), the Commission should not adopt this pricing mechanism for the SB 32/FiT program.

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[10] Interstate Renewable Energy Council Comments to SEC. 399.20 Ruling June 27, 2011, pp. 7 – 9.

[11] Parties that support this pricing mechanism include: the Solar Alliance, Sierra Club California, Fuel Cell Energy, Inc., California Solar Energy Industries Association, Agricultural Energy Consumers Association, Center for Energy Efficiency and Renewable Technology, Placer County, Sustainable Conservation and Green Power Institute, and California Wastewater Climate Change Group.

Technology-specific pricing does not promote a true market-based program as intended in Section 399.20(d)(1) as it does not allow for equal competition between technologies. Under this pricing proposal renewable energy would be valued by technology, allowing some technologies which are struggling to enter California's renewable energy market to collect higher payments for their electricity. The price paid to these facilities would most likely be based on cost estimates and not on actual steel in the ground or market prices. The prices for other technologies that have penetrated California's market such as solar and wind however would be based on actual project costs. This in effect creates an unequal playing field for potential SB 32/FiT participants by potentially assigning a higher price to certain facilities without a significant variation in the attributes provided by these technologies. As SCE argued in its July 21, 2011 comments, the Renewables Portfolio Standard (RPS) statute is technology neutral and therefore a technology-specific pricing mechanism would contradict this statute.[12]

DRA agrees with both SCE and PG&E that technology-specific pricing would likely not result in the lowest cost to ratepayers as this approach mandates the IOUs bypass a competitively priced project for one that is not competitively priced or equal in value to the next incremental cost of electricity. Since SB 32 must be offered on a first-come-first-serve basis (Section 399.20(f)), a technology-specific pricing structure could easily get expensive for ratepayers.[13] This conflicts directly with Section 399.20(d)(3) and the least-cost-best-fit (LCBF) procurement policy. DRA agrees that all program participants should be compensated a fair market value for their electricity but this can be achieved by adjusting the contract price for time of delivery (TOD)—peaking,

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[12] *Southern California Edison Company's Comments to Section 399.20 Ruling Dated June 27, 2011*, p 5.

[13] §399.20 (f) reads "An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand."

non-peaking, and baseload or through a NSC rate that includes a renewable premium adder.

DRA supports the development of a truly competitive renewable market in California. This will include the emergence of certain technologies as more and less competitive, and DRA views this as a positive sign of a well-functioning market. Artificially supporting certain technologies by subsidizing them more than any other renewable—without a showing of additional value—unduly intervenes in a market that is finally coming into maturity.

B. Refund of Incentives

In the July 21, 2011 comments, many parties including DRA advocated for addressing the refund of incentives issue as part of the first phase of the SB 32 implementation; to be resolved by the end of 2011. It is essential for the Commission to address this issue before the SB 32/FiT program is underway so that the tariff is available to all potential program participants. The ALJ should revise the order of this item to be addressed before the end of 2011. However, if the Commission chooses to delay addressing this issue until 2012, DRA supports TURN's recommendation[14] that the affected projects be ineligible to participate in the SB 32/FiT program until a refund mechanism is finalized.

III. CONCLUSION

For all the above reasons, DRA recommends the Commission implement the following:

1. The Commission should adopt the Net Surplus Compensation rate from D.11-06-016 pricing mechanism to the SB 32/FiT program. This pricing proposal complies with both Section 399.20(d)(1) and (d)(3) as well as FERC's mandated on avoided cost.

[14] *Opening comments of The Utility Reform Network and the Coalition of California Utility Employees on the Administrative Lad Judge's Ruling Setting Forth Implementation Proposals for SB 32 and SB 2 1X Amendments to Section 399.20*, p. 8.

2. The Commission should not adopt a pricing mechanism based on the MPR due to the uncertainty of the metric being calculated in the years after 2011.
3. The Commission should not adopt a pricing mechanism based on the results of the RAM auction as this does not provide potential customers with price certainty which is the foundation of a FiT program.
4. The Commission should not adopt a technology-specific pricing mechanism for the SB 32/FiT program as this proposal conflicts with the market based rate requirement of Section 399.20(d)(1) as well as the ratepayer indifference clause of Section 399.20(d)(3).
5. The Commission should address the refund of incentives in the first phase of SB 32 implementation, to be resolved before the end of 2011.

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VERIFICATION

I, Matt Miley, am an attorney for the Division of Ratepayer Advocates which is a party herein, and am authorized to make this verification on DRA's behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing are true and correct.

Executed on August 26, 2011 at San Francisco, California.

/s/ MATT MILEY

Matt Miley
Staff Counsel