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)

CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES REPLY COMMENTS TO SEC. 399.20 RULING OF JUNE 27, 2011

August 26, 2011

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Reply Comments to the Sec. 399.20 Ruling issued in this rulemaking on June 27, 2011 (June 27 Sec.399.20 Ruling). These Reply Comments are filed and served pursuant to the Commission's Rules of Practice and Procedure, the June 27 Sec. 399.20 Ruling, and the Administrative Law Judge's Ruling sent by email to the parties on August 15, 2011, extending the due date for Reply Comments to August 26, 2011.

I.
AS DEMONSTRATED BY MANY PARTIES, THERE IS NO LEGAL IMPEDIMENT TO THE COMMISION IMPLEMENTING SB 32, AS WRITTEN AND INTENDED, BY FOURTH QUARTER 2011.

In CEERT's Opening Comments filed on July 21, CEERT re-confirmed the legality of SB 32's required approach to the "market pricing" that is to be used in the expanded feed-in tariff (FIT) that is the subject of that statute, inclusive of "technology-specific and product-specific rates."[1] Based on applicable state and federal law, CEERT stated in those comments:

> "Thus, … each project that qualifies for participation in the SB 32 Feed In Tariff (FIT) could have a different market price of electricity, when defined as avoided cost, that would be specific to its resource, technology, and location. CEERT does recommend that the market price of electricity used to establish the SB 32 FIT price be differentiated according to resource types, with an avoided cost price

[1] CEERT Comments to Sec.399.20 Ruling of June 27, 2011 ("CEERT Comments"), at pp. 2-3, 6, citing CEERT Opening Brief on SB 32 Implementation, at pp. 9-11; see also, FERC Order Granting Clarification and Dismissing Rehearing, 133 FERC ¶ 61, 059 (October 21, 2010) ("FERC October 2010 Order"), at ¶23, ¶26, mimeo at pp. 11 - 12.

> determination that reflects their individual environmental, locational, and supply characteristics. In this regard, CEERT believes that the applicable avoided cost pricing can be tailored to the market segment targeted in §399.20, which includes projects uniquely situated closer to load centers and sized to interconnect at the distribution level. This approach is appropriate, especially when such projects have not been effectively incorporated into any other RPS procurement mechanism."[2]

In addition, the pricing approach now permitted by states under federal law allows the Commission, consistent with SB 32, to establish a FIT rate based on an avoided cost determination for which the "current components of the MPR [market price referent] … can be a starting point" *if* "expanded to include the supply, generation, and locational characteristics of each resource type," as well as the value of the Renewable Energy Credit (REC) that is transferred to the RPS-obligated retail seller (i.e., investor-owned utilities (IOUs)).[3] In support of this approach, CEERT cited the analysis of Dr. Lori Schell in her "Small-Scale Solar PV Methodology Study."[4] CEERT, however, objected to use of an auction-based mechanism (i.e., the Renewable Auction Mechanism (RAM)), as inappropriate to a FIT and SB 32 specifically.[5]

CEERT's position on SB 32 pricing was shared by many parties in their opening comments. Among others, in their jointly filed comments, Sustainable Conservation and the Green Power Institute (GPI) emphasized that "technology-specific and/or product-specific tariffs are viable options that are consistent with the new §399.20(d)," a "competitive auction mechanism" (i.e., the RAM) "is not appropriate for the small projects that are the intended beneficiaries of SB 32," and the Federal Energy Regulatory Commission (FERC) has confirmed that states can "establish multi-tiered avoided costs structures that reflect a range of avoided

[2] CEERT Comments, at p. 3.
[3] CEERT Comments at p. 4 (with "additional" avoided costs to be reflected in the SB 32 pricing listed at pp. 4-5).
[4] CEERT Comments, at pp. 6-7.
[5] CEERT Comments, at p. 8; see also, D.10-12-048, in which the Commission, in authorizing the RAM, specifically found that the RAM "is distinct from a feed-in tariff." (D.10-12-048, at p. 2.)

costs."[6] In its comments, the Sierra Club California recited the legal authority for states to "establish multi-tiered avoided costs structures that reflect a range of avoided costs based on the specific resources the utility is required to purchase."[7] According to Sierra Club California, this legal authority, consistent with SB 32, permits the Commission to differentiate FIT tariff prices by, and specific to, product and technology.[8]

Similarly, the California Solar Energy Industries Association (CalSEIA) and Fuel Cell Energy (FCE) support setting FIT rates on a technology-specific or product-specific basis and share CEERT's view that the MPR can serve as a *starting point* to develop those rates, especially to enable the Commission "to implement the FIT quickly."[9] On this point, while CEERT does not disagree with Sierra Club California regarding the many drawbacks of continuing to use a fossil-based MPR in developing SB 32 tariff prices,[10] it does remain a known quantity *from which* to develop a price that fully reflects all avoided costs specific to SB 32 renewable technologies and products in order to expedite implementation of SB 32 initially.

In its comments, FCE also specifically addresses the merits of both the study performed by Dr. Schell, as well as the UC –Irvine Fuel Cell Study, as bases for calculating technology-specific rates.[11] FCE further confirms that use of a "competitive auction" would violate SB 32 (Section 399.20(f)).[12]

In contrast, neither Southern California Edison Company (SCE) nor Pacific Gas and Electric Company (PG&E) support "technology-specific pricing" and both continue to assert, as

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[6] Sustainable Conservation/Green Power Institute Comments, at pp. 6, 8, 10-11.
[7] Sierra Club California Comments, at pp. 7-9.
[8] Id., at pp. 8, 21.
[9] CalSEIA Comments, at pp. 9-10; FCE Comments, at pp. 1-2, 4-5.
[10] See, Sierra Club California Comments, at pp. 11-18.
[11] FCE Comments, at pp. 6-8, 11.
[12] FCE Comments, at pp. 9-10.

they have done previously, that such an approach is unworkable as a matter of law and fact.[13] These positions are rooted in several assumptions, which CEERT has repeatedly disputed in its briefs and comments on SB 32. Namely, SCE contends that FERC's recent orders have established that "state commissions have limited jurisdiction to set wholesale prices," that the MPR is not a suitable methodology from which to establish SB 32 tariff prices, and that a "market-based" methodology, like the RAM, and not "administratively-determined" prices should be used in implementing SB 32.[14]

For the many reasons detailed in comments by both CEERT and multiple parties, a fatal flaw in SCE's "logic" is that it does not comply with SB 32 and is not required by any reading of federal law. CEERT continues to urge the Commission to commit to implementing SB 32 to achieve its intended end result – a tariff designed for small projects where price and terms are known on a transparent, upfront basis. Again, as the Commission has recognized, "market-based" mechanisms, like the RAM, are *not* FITs.

CEERT also strongly disagrees with PG&E's assertion that evidentiary hearings must be held "to test the validity" of pricing assumptions and methodologies, including the MPR, before SB 32 can be implemented.[15] The implementation of SB 32 has long been delayed. The Commission should take immediate steps to resolve the questions that have been repeatedly posed for party briefs and input.

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[13] SCE Comments, at pp. 3-9; PG&E Comments at pp. 3-11.

[14] SCE Comments, at pp. 3-11. PG&E states that it "does not oppose SCE's proposal" of a "competitive auction process, similar to the [RAM] to implement the pricing provisions for Section 399.20 contracts." (PG&E Comments, at p. 12.) PG&E claims that it has proposed its own methodology, but it appears to be simply for the Commission to use the MPR with a possible addition of a "locational adder," but only after "identification and quantification of avoided transmission and distribution upgrade costs using a methodology adopted by the Commission." (PG&E Comments, at pp. 6-11.)

[15] PG&E Comments, at p. 4.

II.
PROVIDING A PROCESS FOR EXPEDITED DG INTERCONNECTION SHOULD BE A PRIORITY.

In its opening comments, CEERT addressed the initial determination that "expedited interconnection procedures" could be deferred for resolution until 2012. Based on interconnection barriers to distributed generation, CEERT concluded that "an SB 32 tariff without significant interconnection reform may not achieve effective implementation of that law" and, therefore, the Commission should "prioritize" workshops and discussions to expedite these procedures this year (2011). [16]

In their joint comments, Sustainable Conservation/GPI have also continued to urge the Commission to address this issue now, noting that the "problems posed by interconnection are too great to wait until 2012."[17] Both FCE and Sierra Club California confirm that the interconnection process is "one of the major barriers to distributed generation," such interconnection "has become increasingly difficult," expedited interconnection procedures must be made "a priority in implementing SB 32."[18] While "not opposed to delaying implementation of *expedited* interconnection procedures," SCE does ask the Commission to at least address "more basic interconnection questions at this time," including those related to meeting California Independent System Operator (CAISO) resource adequacy (RA) requirements. [19]

As CEERT did in its opening comments, Sierra Club California also cites to and emphasizes the importance of the KEMA study provided to the California Energy Commission (CEC) on April 22, 2011. Among other things, that study reflects the importance of appropriate

[16] CEERT Comments, at pp. 14-15.
[17] Sustainable Conservation/GPI Comments, at p. 15.
[18] FCE Comments, at p. 17; Sierra Club California Comments, at p. 35..
[19] SCE Comments, at pp. 15-16; emphasis added.

incentives and mechanisms, such as visibility and the ability to curtail resources for reliability purposes, to encourage the growth of distributed generation in California.[20]

III.
CONCLUSION

CEERT again appreciates the opportunity to offer its reply comments on the implementation of SB 32, as revised by SB 1X 2. The opening comments of multiple parties are a reminder of the importance of timely implementation of an expanded FIT in a manner that is consistent with these laws.

Respectfully submitted,

August 26, 2011

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[20] Sierra Club California Comments, at pp. 35-36; see also, CEERT Comments, at pp. 14-15.

VERIFICATION

(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Center for Energy Efficiency and Renewable Technologies Reply Comments to Sec.399.20 of June 27, 2011, have been prepared and read by me and 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.

I declare under penalty of perjury that the foregoing is true and correct and executed on August 26, 2011, at San Francisco, California.

Respectfully submitted,

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