

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 ON
SEC. 399.20 OCTOBER 13, 2011 RENEWABLE FIT STAFF PROPOSAL**

SARA STECK MYERS
Attorney for the
Center for Energy Efficiency and
Renewable Technologies

122 – 28th Avenue
San Francisco, CA 94121
(415) 387-1904 (Telephone)
(415) 387-4708 (FAX)
ssmyers@worldnet.att.net

DANIELLE OSBORN MILLS
Policy Director
Center for Energy Efficiency and
Renewable Technologies

1100 11th Street, Suite 1100
Sacramento, CA 95814
(916) 442-7785 (Telephone)
(916) 447-2940 (FAX)
danielle@ceert.org

November 14, 2011

TABLE OF CONTENTS

Page

Table of Contents.....	i
I. LIKE CEERT, MANY PARTIES OBJECT TO THE KEY COMPONENTS OF THE RENEWABLE FIT BEING MATCHED TO OR CONSIDERED A“SUBSET” OF THE RENEWABLEAUCTION MECHANISM	1
A. The Goal of Resource Diversity.....	2
B. Harmonization with Other <i>Distributed Generation</i> Programs.....	4
C. Additional Adders Are Necessary to Implement SB 32	4
II. MANY PARTIES PROPOSE ALTERNATIVES TO THE STAFF PROPOSAL THAT WARRANT FURTHER CONSIDERATION CONSISTENT WITH THE LAW.....	5
III. CONCLUSION.....	6

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 ON
SEC. 399.20 OCTOBER 13, 2011 RENEWABLE FIT STAFF PROPOSAL L**

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Reply Comments to the Sec. 399.20 “October 13, 2011 Renewable FIT [feed-in tariff] Staff Proposal.” These Reply Comments are filed and served pursuant to the Commission’s Rules of Practice and Procedure and the Administrative Law Judge’s Sec. 399.20 Ruling of October 13, 2011 (“October 13 Sec.399.20 Ruling”).

I.

**LIKE CEERT, MANY PARTIES OBJECT TO THE KEY COMPONENTS
OF THE RENEWABLE FIT BEING MATCHED TO AND CONSIDERED
A “SUBSET” OF THE RENEWABLE AUCTION MECHANISM.**

In its Opening Comments, CEERT expressed great concern with the failure of the October 13, 2011 Renewable FIT Staff Proposal to be guided by established principles of statutory construction and, in turn, to follow the law at issue here – namely, the Commission’s implementation of Public Utilities (PU) Code Section 399.20. That legislation provides the express direction to the Commission on the components and implementation of a “feed in tariff” (FIT) for procurement of electricity eligible for the Renewable Portfolio Standard (RPS) Program from projects up to 3 MWs in size.

The Opening Comments of many parties on the October 13, 2011 Renewable FIT Staff Proposal raised similar concerns, especially focusing on the inapplicability of the Renewable

Auction Mechanism (RAM) to the statutory mandate of Section 399.20 and outcomes or “guiding principles” inconsistent with that law. CEERT agrees with those parties who have concluded that the October 13, 2011 Renewable FIT Staff Proposal (1) does not meet its stated guiding principle of “ensur[ing] [that] all RPS-eligible renewable resources are able to participate,”¹ (2) inappropriately requires harmonization with other procurement programs that do not meet the goals of Senate Bill (SB) 32 (Section 399.20),² and (3) fails to include price adders required to address the principle of resource technology diversity, address state climate and energy goals, and reflect the intent of SB 32.³

A. The Goal of Resource Diversity

The October 13, 2011 Renewable FIT Staff Proposal states that its development of its proposed Renewable FIT Program is guided by 12 principles, which includes: “Ensure all RPS-eligible renewable resources are able to participate.”⁴ Along with CEERT, Sustainable Conservation (SC), Green Power Institute (GPI), California Solar Energy Industries Association (CalSEIA), and AgPower Group, LLC (AgPower) have concluded that this guiding principle is not achieved by the October 13, 2011 Renewable FIT Staff Proposal. The principal reason is that the October 13, 2011 Renewable FIT Staff Proposal’s adopted FIT pricing mechanism is based on a very different set of projects—in size and in resource technology— than intended by SB 32, with little consideration of the unique avoided costs of various resource technologies, or the benefits of different types and applications to the environment or to the grid.

¹ October 13, 2011 Renewable FIT Staff Proposal, at p. 7 (Guiding Principle 11); Sustainable Conservation (SC)/Green Power Institute (GPI) Joint Comments, at p. 3.

² October 13, 2011 Renewable FIT Staff Proposal, at p. 7 (Guiding Principle 7); Sustainable Conservation (SC)/Green Power Institute (GPI) Joint Comments, at p. 4.

³ Ag Power Group, LLC (AgPower) Comments, at p. 9; Fuel Cell Energy (FCE) Comments, at p. 9; SC/GPI Joint Comments, at p. 4.

⁴ October 13, 2011 Renewable FIT Staff Proposal, at p. 7 (Guiding Principle 11)

Yet, as CalSEIA has commented, citing to Federal Energy Regulatory Commission (FERC) authority, “[a]voided cost rates may ... differentiate among qualifying facilities using various technologies on the basis of supply characteristics of the different technologies.”⁵ A similar point is made by SC/GPI in their Joint Opening Comments.⁶ In turn, SC/GPI conclude that the October 13, 2011 Renewable FIT Staff Proposal is not likely to lead to the long-stated goal of a diversified distributed generation portfolio because of its recommended adoption of the RAM will not provide an accurate benchmark price for all technologies (specifically biogas). From SC/GPI’s perspective, it is inappropriate to use the results of an auction that was expressly not intended to function as a FIT, and, instead, the Commission should reject such an auction approach in favor of technology-based avoided costs.⁷ In support, SC/GPI specifically reference Section 399.20(c), which states: “Small projects of less than three megawatts that are otherwise eligible renewable energy resources may face difficulties in participating in competitive solicitations under the renewables portfolio standard program.”⁸

This position is echoed by Vote Solar Initiative, which states in its comments that “the pricing for RAM contracts are unlikely to result in sufficient payment for the smaller programs targeted under this program.”⁹ While the Vote Solar Initiative proposes using RAM contracts to set the base price to start the price-finding process as one option, it does not rule out the options of using a price from another product category or basing the FIT price on the MPR, as CEERT has suggested as an alternative to technology-specific pricing.

⁵ CalSEIA Comments, at p. 5.

⁶ SC/GPI Joint Comments, at p. 3.

⁷ SC/GPI Joint Comments, at p. 8.

⁸ SC/GPI Comments, at p. 7.

⁹ Vote Solar Initiative Comments, at p. 4.

B. Harmonization with Other *Distributed Generation* Programs.

CEERT also agrees with SC/GPI that harmonization of the Renewable FIT with a wide range of other existing procurement programs (e.g. RPS, RAM, IOU Solar PV Programs, combined heat and power (CHP) FIT, California Solar Initiative (CSI), Small Generator Incentive Program (SGIP) and net metering) is not a goal of SB 32 and, more importantly, may not achieve the goals or mandates of that specific law.¹⁰ CEERT urges the Commission to create a Renewable FIT Program that is *complementary* to and furthers renewable distributed generation in California consistent not only with SB 32, but also the climate and energy goals of Assembly Bill (AB) 32 (greenhouse gas (GHG) emission reductions), SB 1X 2 (33% RPS), and Governor Brown's 12,000 MW of DG goal. Resource diversity is crucial to achieving each of the foundational goals of these laws and the Governor's directive. What must be recognized is that the Renewable FIT Program was intended to, and should, target a unique segment of the renewable energy market, which currently is undersubscribed, but will provide unique benefits to the system and to the environment.

C. Additional Adders are Necessary to Implement SB 32

In their Joint Opening Comments, SC/GPI note that the October 13, 2011 Renewable FIT Staff Proposal overlooks the fact that biogas digesters located on dairies do not have the flexibility to move their operations to find a better location on the utility's distribution system.¹¹ Therefore, simply including a locational adder as part of the Renewable FIT will not be sufficient to address the varying host of environmental and reliability benefits provided by a diverse portfolio of resources, i.e., biogas digesters.

¹⁰ SC/GPI Comments, at p. 5

¹¹ SC/GPI Comments, at p. 13.

CEERT agrees with SC/GPI, AgPower, and FCE that the Legislature has already determined in Section 399.20(d)(1) that the Commission is to consider additional adders in calculating the Renewable FIT price.¹² CEERT, therefore, recommends that the Commission direct Energy Division to work with the California Air Resource Board (CARB) and other appropriate state agencies to assess the additional environmental and greenhouse gas benefits of various resource technologies (e.g., biogas).

II.
MANY PARTIES PROPOSE ALTERNATIVES TO THE STAFF PROPOSAL THAT WARRANT FURTHER CONSIDERATION CONSISTENT WITH THE LAW.

In their comments, many parties proposed alternative approaches to the October 13, 2011 Renewable FIT Staff Proposal’s reliance on the RAM for setting the base price for the Renewable FIT Program. CalSEIA recommends that the Commission look at the California Solar Initiative (CSI) database to determine avoided cost information. Specifically, CalSEIA proposes using the “installed-cost-per-watt data for systems installed in 2011 that are receiving performance-based incentives.”¹³

Alternatively, AgPower proposes that an avoided cost-based pricing methodology specifically for biogas projects should be an element of the SB 32 program and proposes a formula for determining the avoided cost of biogas projects.¹⁴ SC/GPI recommend including an “Emerging Technology Adder” to reflect the infancy of the California biogas industry.¹⁵ FCE reiterated its support for two alternative approaches for setting SB 32 prices in a manner that

¹² SC/GPI Comments, at pp. 13-14; AgPower Comments, at p. 9; and FCE Comments, at p. 9.

¹³ CalSEIA Comments, at p.6.

¹⁴ AgPower Comments, at p.5.

¹⁵ SC/GPI Comments, at p. 14.

would reflect the avoided cost of SB 32 resources: technology-specific pricing or the market price referent (“MPR”) plus adders to determine the base price for the FIT.¹⁶

CEERT believes that each of these recommendations appropriately reflect that different resource technologies encounter different costs of development and provide unique benefits to the grid. The diversity of suggestions for FIT pricing of various resource technologies reflects the need for technology-specific pricing “with an avoided cost price determination that reflects their individual environmental, locational, and supply characteristics.”¹⁷ Alternatively, CEERT agrees that either of FCE’s proposed alternatives would address the concerns of the parties noted above by providing a technology-specific base-price of projects that more appropriately reflects the variation in costs incurred and benefits provided by each technology.

III. CONCLUSION

As it did in its Opening Comments on the October 13, 2011 Renewable FIT Staff Proposal, CEERT, CEERT strongly urges the Commission to provide express direction to its Staff (Energy Division) to offer a “Proposal” consistent with the Legislature’s *directions* to the Commission in Section 399.20 for the Renewable FIT. The Opening Comments of the parties

¹⁶ FCE Comments , at pp. 8-9.

¹⁷ CEERT Comments, at pp.2-3.

cited by CEERT above offer the Commission a variety of ways to achieve this outcome. These approaches should be given the Commission's immediate attention.

Respectfully submitted,

November 14, 2011

/s/ SARA STECK MYERS

Sara Steck Myers

Sara Steck Myers
Attorney at Law
122 – 28th Avenue
San Francisco, CA 94121
Telephone: (415) 387-1904
Facsimile: (415) 387-4708
E-mail: ssmyers@att.net

And

Danielle Osborn Mills
Policy Director
Center for Energy Efficiency and
Renewable Technologies
1100 11th Street, Suite 1100
Sacramento, CA 95814
(916) 442-7785 (Telephone)
(916) 447-2940 (FAX)
danielle@ceert.org

On Behalf of the
Center for Energy Efficiency and
Renewable Technologies

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 on Sec. 399.20 October 13, 2011 Renewable FIT Staff Proposal, 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 November 14, 2011, at San Francisco, California.

Respectfully submitted,

/s/ SARA STECK MYERS

Sara Steck Myers
Attorney at Law
122 – 28th Avenue
San Francisco, CA 94121
(415) 387-1904
(415) 387-4708 (FAX)
ssmyers@att.net

Attorney for the
Center for Energy Efficiency and Renewable Technologies