

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)

**JOINT REPLY OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES;
AG POWER GROUP, LLC; SUSTAINABLE CONSERVATION;
AGRICULTURAL ENERGY CONSUMERS ASSOCIATION;
GREEN POWER INSTITUTE; CALIFORNIA WASTEWATER CLIMATE
CHANGE GROUP; CALIFORNIA FARM BUREAU FEDERATION;
FUEL CELL ENERGY; AND FLEXENERGY, INC.,
TO RESPONSES TO THE JOINT MOTION FILED DECEMBER 19, 2011**

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January 20, 2012

Joint Parties

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The Center for Energy Efficiency and Renewable Technologies (CEERT); Ag Power Group, LLC (AgPower); Sustainable Conservation (SC); Agricultural Energy Consumers Association (AECA); Green Power Institute (GPI); California Wastewater Climate Change Group (CWCCG); California Farm Bureau Federation (Farm Bureau); Fuel Cell Energy (FCE); and FlexEnergy, Inc. (“Joint Parties”) jointly reply to responses to the Joint Motion that was filed by the Joint Parties on December 19, 2011. The Joint Motion requests a ruling directing the consideration of an administratively determined avoided cost pricing methodology for use in the Renewable Portfolio Standard (“RPS”) Program Feed in Tariff (“FIT”) at a Workshop to be scheduled during January 2012 that would be part of the record for the Commission’s decision on the Renewable FIT. This Joint Reply is filed and served pursuant to Rule 11.1(f) of the Commission’s Rules of Practice and Procedure and the permission granted by Administrative Law Judge DeAngelis to file this reply sent by electronic mail to the service list on January 10, 2012.

I.
**THE RESPONSES OF MULTIPLE PARTIES SUPPORT THE
JOINT MOTION ON ITS OWN TERMS OR IF MODIFIED TO INCLUDE
CONSIDERATION OF ALL COST OR VALUE-BASED PRICE MECHANISM AT THE
WORKSHOP, A MODIFICATION TO WHICH THE JOINT PARTIES AGREE.**

In the Joint Motion, Joint Parties moved for an ALJ's Ruling to be issued directing that an additional Workshop be held in January 2012 to consider an administratively determined, avoided-cost based pricing mechanism for the Renewable Feed in Tariff (FIT). As part of that Joint Motion, the Joint Parties also moved for that Workshop, and any resulting comments, to be part of the record on which the Commission will base its decision implementing the Public Utilities (PU) Code Section (Sec.) 399.20 FIT. The Joint Motion recommended that Appendix A to the Joint Motion "serve as a starting point for that discussion, with any other alternative *administratively determined, avoided-cost based* mechanisms or refinements to Appendix A being considered at the same time."¹ In making these requests, the Joint Motion expressed the concern that the failure to consider these alternatives as part of any decision on the Sec. 399.20 FIT would "defeat the language and purpose of Section 399.20, ignore the record in this proceeding, and put the Commission on course to decide this issue in conflict with the law."²

The California Solar Energy Industries Association (CalSEIA), Solar Energy Industries Association (SEIA), and the Sierra Club California (Sierra Club) each filed responses in support of the Joint Motion's Workshop request. These parties agreed that the record in this proceeding had not provided a sufficient opportunity for such fixed price alternatives to be considered in implementing the Sec.399.20 FIT.³ Sierra Club specifically responded that the Energy Division

¹ Joint Motion, at p. 5; emphasis original.

² Joint Motion, at p. 5.

³ See, e.g., SEIA Response, at p. 2. SEIA further stated: "In short, the Joint Parties are seeking to ensure that the record of this proceeding contains sufficient information for the Commission to make a reasoned decision on the appropriate, statutorily consistent pricing mechanism. SEIA supports the Joint Parties' request." (Id.)

“staff proposal and workshop format did not provide for a process that is adequate to assess the merits” of other alternatives, with SEIA also noting in its response:

“In short, the Joint Parties are seeking to ensure that the record of this proceeding contains sufficient information for the Commission to make a reasoned decision on the appropriate, statutorily consistent pricing mechanism. SEIA supports the Joint Parties’ request.”⁴ (Id.)

A full and complete record on pricing methodologies appropriate to the implementation of the Sec.399.20 FIT is precisely the goal of the Joint Motion. It is for this reason that the Joint Parties concur with the responses filed by CalSEIA, SEIA, and Sierra Club, which emphasize the need to consider all cost-based or fixed price alternatives to the auction mechanism recommended by Energy Division staff.

In this regard, the Division of Ratepayer Advocates (DRA) in its response, while expressing concern regarding the timing of the Workshop, did “fin[d] merit in several of the legal arguments raised by the Joint Parties’ Motion.”⁵ If the Joint Motion were granted, DRA asked that the Workshop consider “all cost and value-based pricing mechanisms.”⁶

The Joint Parties agree with the recommendations of DRA, CalSEIA, SEIA, and the Sierra Club that the scope of the requested Workshop should include all cost and value-based pricing mechanisms. Inclusion of Appendix A in the Joint Motion was simply to provide context for the requested Workshop.

The only other modification, given the timing of responses to the Joint Motion and this reply, is that the Workshop should be held as soon as possible, consistent with required notice, in early February 2012. Such action is required in response to the Assigned Commissioner’s and Administrative Law Judge’s Ruling Setting Workshop on a Utility Standard Form Contract for

⁴ Sierra Club Response, at p. 2; SEIA Response, at p. 2.

⁵ DRA Response, at p. 2.

⁶ Id., at p. 3.

the Section 399.20 Feed-in Tariff Program issued in this rulemaking on January 10, 2012 (January 10 AC/ALJ's Ruling). Specifically, that ruling states that the Commission expects to issue a Proposed Decision that will address "price and other program details" in the "first quarter of 2012."⁷

If the Commission cannot identify an available date for the Workshop in early February, the Joint Parties recommend that the February 22 Workshop, now scheduled to consider the Renewable FIT "single standard form contract," should be used to address cost and value-based pricing mechanisms for the Renewable FIT. The standard contract issue would then be deferred to a Workshop scheduled for late February or early March. This approach is appropriate given that the "single standard form contract" will be addressed in a later, "second" Proposed Decision expected in the second quarter of 2012. As a result, there is not the same urgency for addressing this issue as there is for "price" "details" for the Renewable FIT, which will be resolved in the first quarter of 2012.⁸

II.
THE RESPONSES OPPOSING THE MOTION DO NOT DIMINISH
THE NEED FOR A FULL RECORD ON ALL PRICING PROPOSALS
THAT WILL FURTHER THE INTENT AND DIRECTION OF SB 32.

As to the three other parties responding to the Joint Motion, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and L. Jan Reid (Reid), PG&E's and Reid's responses are limited to expression of procedural concerns with the holding of an additional Workshop on the Renewable FIT. The Joint Parties do not believe that these concerns have merit when, in fact, *no* Workshop has been held to explore the merits of the October 13, 2011 Renewable FIT Staff Proposal or alternatives thereto. In fact, as the Joint Motion makes clear, the manner in which comments were restricted to the context of that Staff

⁷ January 10 AC/ALJ's Ruling, at p. 1.

⁸ *Id.*, at pp. 1-2.

Proposal has improperly served to constrain the scope of the pricing methodology to be used or adopted by the Commission in implementing the Sec.399.20 Renewable FIT to an auction-based mechanism.⁹

Thus, by granting the Joint Motion, the Commission will, as SEIA stated in its response, “ensure that the record of this proceeding contains sufficient information for the Commission to make a reasoned decision on the appropriate, statutorily consistent pricing mechanism.”¹⁰ It is, therefore, imperative for the Commission to grant the Joint Motion’s request for a Workshop to avoid the Commission having prejudged the implementation of Sec.399.20 in issuing the October 13, 2011 Renewable FIT Staff Proposal and limiting comments to that proposal.¹¹

The only other response to the Joint Motion that has yet to be addressed in this reply is the one filed by SCE. In asking that the Joint Motion be denied, SCE offers its interpretation of Sec.399.20, to which the Joint Parties clearly disagree. Joint Parties do agree that these positions on the law have already been argued in previously filed briefs and comments on Sec. 399.20 implementation. What the Joint Motion is requesting, however, is an opportunity to offer and discuss Renewable FIT pricing methodologies that are *alternatives* to, and were summarily rejected by, the October 13, 2011 Renewable FIT Staff Proposal that have *not* been explored in any Workshop format. To do otherwise, as addressed in the Joint Motion and herein, is to inappropriately limit the record on implementing Sec.399.20 Renewable FIT.

III. CONCLUSION

For the reasons stated in the Joint Motion, and, with the modification suggested by other parties discussed above, the Joint Parties urge the Commission to grant the Joint Motion and

⁹ Joint Motion, at p. 2.

¹⁰ SEIA Response, at p. 2.

¹¹ Joint Motion, at pp. 2-5.

issue an ALJ's Ruling directing that a Workshop be held in late January, early February, or the February 22 Workshop to consider an administratively determined, avoided-cost based pricing mechanism for the Renewable FIT, as well as other pricing proposals that will result in a fixed price FIT. The Joint Parties also renew their additional request, which was part of the Joint Motion, that this Workshop be included in the record on which the Commission will base its decision implementing the Sec. 399.20 Renewable FIT.

Respectfully submitted,

January 20, 2012

/s/ SARA STECK MYERS

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On Behalf Of

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VERIFICATION
(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT) and have further been authorized to submit this verification on behalf of AgPower Group, LLC; Sustainable Conservation; Agricultural Energy Consumers Association; Green Power Institute; California Wastewater Climate Change Group; California Farm Bureau Federation; Fuel Cell Energy; and FlexEnergy, Inc. (“Joint Parties”). Because these parties are absent from the City and County of San Francisco, California, where I have my office, I make this verification for each said party for that reason. The statements in the foregoing Reply of the Center for Energy Efficiency and Renewable Technologies; AgPower Group, LLC; Sustainable Conservation; Agricultural Energy Consumers Association; Green Power Institute; California Wastewater Climate Change Group; California Farm Bureau Federation; Fuel Cell Energy; and FlexEnergy, Inc., to Responses to the Joint Motion filed on December 19, 2011 has been prepared or 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 January 20, 2012, at San Francisco, California.

Respectfully submitted,

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