

January 2006

## China's New Renewable Energy Law: The California Connection

Jan Hamrin

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>

 Part of the [Energy and Utilities Law Commons](#)

---

### Recommended Citation

Jan Hamrin, *China's New Renewable Energy Law: The California Connection*, 36 Golden Gate U. L. Rev. (2006).  
<http://digitalcommons.law.ggu.edu/ggulrev/vol36/iss3/5>

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact [jfischer@ggu.edu](mailto:jfischer@ggu.edu).

ARTICLE

CHINA'S NEW RENEWABLE  
ENERGY LAW:  
THE CALIFORNIA CONNECTION

DR. JAN HAMRIN\*

INTRODUCTION

In June 2003, the National People's Congress ("NPC") listed a "Renewable Energy and Utilization Promotion Law" ("Renewable Energy Law") as part of its upcoming legislative plan.<sup>1</sup> In August 2003, the NPC authorized the National Development and Reform Commission ("NDRC") and Tsinghua University to draft a "government version" and an "expert version," respectively, of the Renewable Energy Law to be submitted to the NPC Standing Committee by the end of June 2004.<sup>2</sup> In November 2003, during a workshop on National Energy Policy in Beijing, Chinese colleagues from NDRC's Energy Research Institute

---

\* Dr. Jan Hamrin is President of the Center for Resource Solutions, a national non-profit located in San Francisco specializing in renewable resource and climate change policy and policy implementation. The author and editors of the Golden Gate University Law Review Environmental Law Journal would like to thank and acknowledge Hong Tang for his diligence and effort locating and translating the numerous Chinese sources cited in this Article. Mr. Tang is a Research Assistant at The Center for Advanced International Legal Studies, Golden Gate University School of Law, and an S.J.D. candidate at Golden Gate University. Mr. Tang holds an LLM from the University of the Pacific, McGeorge School of Law.

<sup>1</sup> [http://nyj.ndrc.gov.cn/zywx/t20051104\\_48318.htm](http://nyj.ndrc.gov.cn/zywx/t20051104_48318.htm).

<sup>2</sup> Directing two different entities to separately draft versions of a new law is a fairly common practice by the NPC. See <http://www.answers.com/topic/national-people-s-congress> (explaining that the drafting process of NPC legislation begins with one group authoring an initial draft and further consideration by larger groups).

414 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

(“ERI”) asked the advice of the San Francisco based Center for Resource Solutions (“CRS”), of which I am President, in laying out a framework for a national renewable energy law. That event marked the beginning of a challenging and fascinating collaboration between China and California in the creation of China’s Renewable Energy Law.

By the fall of 2003, the California Renewable Energy Team, had been working in China for about three years and had formed a productive working relationship with colleagues in the Chinese Government, research institutes, and Tsinghua University.<sup>3</sup> We had begun this relationship by organizing and participating in workshops on renewable energy. We honed our PowerPoint presentations, used our best public speaking skills (though none of us speak Mandarin), and tried to present the “best of the west” as far as what other western countries were doing to encourage renewable energy use. Though we were enthusiastic in our encouragement for China’s consideration of greater use of renewables, we were never sure whether what we said was being seriously considered or whether our colleagues were being polite and listening, but going on with business-as-usual.

We had been coming to China four to five times a year for three years and engaged in numerous conversations, meetings and presentations, but were we really accomplishing anything? The posting of the Renewable Energy Law on the NPC agenda, and an inquiry by our Chinese colleagues to hear our opinions regarding a framework for such a law, signified an enormous breakthrough. Someone must have been listening somewhere or at least our thinking had converged with that of some of our Chinese colleagues. Maybe all our trips, papers and talking over the last three years were going to finally bear fruit. This story recounts our experience and the implications of this experience for both the California and China renewable energy sectors.

#### I. THE FRAMEWORK

The first ideas for a renewable energy law framework began to take shape while drinking tea and writing on a paper napkin during that National Energy Policy Conference in November 2003. As I huddled with my Chinese colleagues, we discussed what would need to be

---

<sup>3</sup> EV World, Bill Moore, Energy Foundation Encourages Efficiency In China, <http://www.evworld.com/view.cfm?section=article&storyid=179>. (Part of the China Sustainable Energy Project is funded by the David and Lucile Packard Foundation, in partnership with The Energy Foundation. Both the Energy Foundation and the Center for Resource Solutions are located at the Presidio in San Francisco. Members of the Team were Jan Hamrin and Ryan Wiser, as well as other experts as needed.)

addressed in a new law to make renewables actually happen in China. There was a need for some type of policy to support the development of a renewable energy industry in China to establish a viable and long-term renewable market. In other countries this had been done through so called “feed-in” tariffs,<sup>4</sup> renewable portfolio standards (“RPS”),<sup>5</sup> and tendering systems.<sup>6</sup>

Besides the thorny issue of what policy strategy to adopt as an incentive to renewable energy development, there were numerous other issues to be addressed:

(1) How does one define “renewables” – what technologies/resources should be eligible to receive incentives or special benefits contained in the law? For example, does hydro count as renewable, and if so, up to what size? Does nuclear energy count as renewable?

(2) Would the law only apply to grid-connected renewables or to renewable development in remote rural areas?

(3) Would the law just include renewable energy used in the electricity sector or renewables that might be used for heat, light and fuel in the transportation sector as well?

(4) What policy criteria might be most helpful in deciding which policy strategy to select?

(5) If a feed-in tariff were selected as the policy strategy, what methodology should be used to calculate the tariff(s)?

(6) Would it be politically feasible to spread the costs of new renewable power generation over all electric consumers so there is not an unfair financial burden placed on the utility customers where the project is located? If so, how?<sup>7</sup>

---

<sup>4</sup> A feed-in tariff is where the government (or electricity regulators) sets a price that utilities will pay for the purchase of renewable energy. The utilities are required by legislation to purchase all of the renewable energy sold to them at this price. So the price for the renewable power is known but the quantity of renewable power that will be offered at that price is not known – that is decided by the market. Germany and Spain are the best known countries using feed-in tariffs, though the implementation of the Public Utilities Policy Act in the United States, particularly in California, could be described as the first feed-in tariff – it just did not use that title.

<sup>5</sup> A renewable portfolio standard (RPS) is a policy where the government (either state or Federal) sets the quantity of renewable power that is to be acquired by the utilities (usually as a percentage of their annual electricity demand), but the cost of acquiring that power is unknown. A renewable portfolio standard is most commonly used in the United States (there are 21 states plus the District of Columbia with RPS Programs), though some European countries have also begun using this strategy.

<sup>6</sup> The “tendering” system is where the government identifies an amount of renewable power they want to procure and then establishes some type of competitive auction to acquire that amount at the lowest price(s) offered. This system was used in the United Kingdom in the 1980s and 1990s.

<sup>7</sup> Limiting cost recovery of renewables to the customers of the utility where the project was

416 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

(7) Would it be possible to enforce an RPS policy under the current electricity sector structure and environment?

(8) If an RPS policy were selected, what should be the basis for determining the appropriate quantity/target?

(9) Since the Chinese government was already using a competitive bidding strategy for procuring power from large wind projects (the Wind Concession Program),<sup>8</sup> how could this strategy be integrated into the law?

(10) How would any above-market costs of renewables be paid? Was there a need for a special fund or some other financial strategy to reduce the perceived above-market costs of renewables?

(11) Were there any tax and audit policies in need of adjustment if renewables were to fairly compete in the marketplace with conventional technologies?

(12) Was there a need for any technology standards and testing of renewable equipment to ensure high quality, and to support consumer and investor confidence?

(13) Is there sufficient on-going support for research and development of new renewable technologies or is there a need for some type of legislative action to ensure such support?

(14) Since transmission access and the cost of transmission have been a continuing problem for renewables in western countries, transmission had to somehow be included in the new Chinese Renewable Energy Law.

(15) What government agency would be responsible for implementing the law?

(16) How would provincial governments be integrated into the national strategies?

(17) As for legal liability, were there going to be any penalties assessed for non-compliance, and if so, against whom?

We talked through these questions, filling many paper napkins with diagrams and ideas. We developed a framework for an omnibus type of legislation. Our starting point was all-inclusive, and if people didn't like it, it could always be whittled down to a smaller, more focused legislative proposal.

---

located had proven to be a major barrier to renewable power projects in the past according to provincial utility managers with whom we spoke.

<sup>8</sup> National Renewable Energy Laboratory, <http://www.nrel.gov/docs/fy04osti/35787.pdf>.

## II. FLESHING OUT THE ISSUES

Now our work had just begun. Our Chinese colleagues wrestled with the issues and sought our help in understanding how other countries had resolved them. They would posit questions similar to the ones listed above, often with very focused sub-points. We would research the topic and write a short paper, highlighting approaches used in California and other states, as well as, European and other countries with successful renewable energy programs.<sup>9</sup> Because California has long been in the forefront of renewable energy development, the Californian experiences with many of these policy issues were interesting and useful to our Chinese colleagues.

Early in 2004, the Chinese government requested assistance from the Sustainable Energy Project and CRS to help organize and support a study tour by Chinese officials working on the Renewable Energy Law to come to the United States to meet with State and Federal Government officials, industry representatives and others who have been involved with renewable development in key areas of the country. As a result, we organized a three-week itinerary in March/April 2004, including meetings with key people in strategic states to discuss renewable energy legislation and regulations as they have evolved here.

The final list of highly distinguished tour participants included: Shi Lishan, Director of the Energy Bureau of NDRC and Head of the delegation; Ding Tong, Deputy Director of the Investment Department of NDRC; Lin Dan, Project Officer of the Legislation Department of Environmental Protection and Resource Conservation Committee of NPC; Li Yunruo, Project Officer of the Department of Agriculture, Natural Resources and Environment Protection, Legislative Affairs Office, State Council; Luan Jialin, Director of the Rural Hydro Power and Electrification Development Bureau of the Ministry of Water Resources; Wang Jiuchen, Director of the Renewable Energy Division of Science and Technology Education Department of the Ministry of Agriculture; Wang Zhongying, Director of the Center for Renewable Energy Development of the Energy Research Institute; and a number of academics. This high-level delegation represented the most pertinent governmental players involved in the drafting and final approval of the Renewable Energy Law.<sup>10</sup> At approximately this same time, a parallel

---

<sup>9</sup> See generally, Center for Resource Solutions, Library, <http://www.resource-solutions.org/lib/china.htm> (listing articles covering various energy topics and examples).

<sup>10</sup> See *infra* notes 24 – 44 and accompanying text for a general overview of the lawmaking and administrative rulemaking process in the People's Republic of China.

418 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

Chinese delegation visited Europe and Australia to acquire a similar background of information and experiences. Both groups were to return to China and work on the draft law.

The first stop and centerpiece of the March/April 2004 study tour were meetings with officials in California responsible for developing California's renewable energy laws and regulations, and their implementation. After a one-day orientation meeting at the CRS offices in San Francisco, we traveled to Sacramento, where the Chinese delegation heard the views of legislators who have written and supported renewable energy laws, the state agency charged with implementing these laws, and the industry that is directly affected by the laws. The group met with California Energy Commissioners and staff, key California legislators involved with California renewable energy legislation,<sup>11</sup> and representatives of California's renewable energy industry. In each case there were several hours of high quality time spent on questions and answers related to what California hoped to accomplish and what California was doing (and had done) in the renewables area. In the evenings, we would discuss what the group had heard and seen, answer questions and discuss how some of these concepts might fit into the Chinese context.

From California, we took the delegation to Austin, Texas, where the discussions were focused particularly on wind resources (a major interest of the Chinese who have some excellent wind resources of their own). In Texas, the group met with legislators, regulators, governmental officials and wind developers, and also went on a tour of the transmission control center at the Electric Reliability Council of Texas.

The next stop was Washington D.C., where the group met with representatives of the National Renewable Energy Laboratory, the Department of Energy ("DOE"), the Environmental Protection Agency ("EPA"), the American Council on Renewable Energy, the Worldwatch Institute, the American Wind Energy Association, and Congressional Research Services, for a varied set of perspectives on renewable energy laws. The final destination was New York, where the group met with representatives of the Pace Law School Energy Project.<sup>12</sup>

The group received a substantial overview of all of the policies that have been passed and implemented in the United States as a whole, as well as those passed at the state level. The list ranged from financial

---

<sup>11</sup> This visit not only included meetings with Senators Sher and Bowen but also a tour of the Capital with an opportunity to see the California Legislature in session and, finally, a tour of a California windfarm.

<sup>12</sup> Pace Law School Energy Project, <http://www.pace.edu/lawschool/energy/>.

incentives based on the quantity of investment or production, to government mandated pricing structures, and production and procurement requirements. All of these policies interact with the market. Getting the right mix of policies in place, as well as implementing the necessary policies so they are effective and available when needed is the challenging task.

### III. THE DEVELOPMENT OF THE DRAFT LAW

Over the next few months, the NDRC drafting committee shared their drafts with us and we sent comments back that primarily focused on implementation details.<sup>13</sup> There was a constant tension between our desire to see as much detail included in the law as possible and the fact this was a framework law, which by definition included mainly vague wording that left much room for interpretation and little chance of accountability. NPC's delegation of authority tends to be broad, not unlike the United States Congressional delegation of authority to the agencies.<sup>14</sup> However, in the United States, the judicial branch is empowered with interpreting the Constitution and other laws and regulations, as well as with oversight of administrative decisions, whereas in the P.R.C. the power of constitutional supervision, and review of lower-level legislation for consistency with NPC and NPC Standing Committee laws, resides in the NPC and its Standing Committee.<sup>15</sup>

Though the Chinese said they were in a hurry to get a Renewable Law through the NPC process, we were skeptical. After all, the last Chinese energy law, the National Electricity Law, had taken ten years from the date it was first posted on the Legislative Agenda of the NPC until the Congress finally passed it.<sup>16</sup> We hoped the Renewable Energy Law would pass more efficiently, perhaps requiring only two or three years for passage. In May 2004, NDRC sent a draft version of the law to interested stakeholders,<sup>17</sup> and scheduled a workshop to hear comments.<sup>18</sup>

The workshop lasted a day and a half, with one day primarily

---

<sup>13</sup> The drafting committee consisted of NDRC and Energy Research Institute (ERI) staff members.

<sup>14</sup> Randall Peerenboom, *Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China*, 19 BERKELEY J. INT'L L. 161, 206 (2001).

<sup>15</sup> *Id.* at 210.

<sup>16</sup> <http://www.china5e.com/news/power/200402/200402020080.html>.

<sup>17</sup> Recipients of the draft included governmental, utility, renewable industry, NGO, and international representatives.

<sup>18</sup> [http://nyj.ndrc.gov.cn/zywx/t20051104\\_48318.htm](http://nyj.ndrc.gov.cn/zywx/t20051104_48318.htm).



## 420 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36]

focused on comments from Chinese stakeholders and half of a day focused on comments by international representatives (governmental, NGOs, and renewable industry). Over 200 people participated in the workshops with many energetic comments and discussions. CRS was tasked with helping to organize the participation by international representatives, as well as provide advice on incorporating the public comments into the next draft. We were surprised by the broad public participation in the workshops and by the willingness of the drafting committee to incorporate public comments. Our surprise stemmed from the common knowledge that in the past the Chinese Communist Party (“CCP”) had nearly absolute powers in regards to lawmaking. Now, however, as reflected by our experience, the CCP influence appears to have diminished slightly in the administrative law area.<sup>19</sup> While it “continues to influence rulemaking through the nomenklatura system [of appointments] and by setting general policies . . . CCP influence on administrative rulemaking is breaking down and agencies are increasingly assertive in pursuing their own agendas.”<sup>20</sup> The drafting of legislation in the United States seldom involves the type of broad-based participation we saw in China, let alone the incorporation of comments from parties independent of their campaign contributions.<sup>21</sup> These Chinese workshops reflected a populist, democratic approach incongruous with my pre-conceived ideas about Chinese governance.

In July 2004, both NDRC and Tsinghua University submitted their draft laws to the NPC.<sup>22</sup> The final revised draft laws that were submitted to the NPC Standing Committee by NDRC and Tsinghua University contained all of the key elements we had initially outlined in November of 2003. However, the drafters continued to resist our suggestions for more specific implementation language, saying it was not the Chinese way. Nevertheless, the drafts were much more specific in their language and approach than past energy laws and even contained penalties for non-compliance (though less strict than we suggested).<sup>23</sup> Our colleagues

---

<sup>19</sup> Peerenboom, *supra* note 14, at 202.

<sup>20</sup> *Id.* at 204.

<sup>21</sup> See, e.g., Lauren Hammer Breslow, Note, *The Best Pharmaceuticals for Children Act of 2002: The Rise of the Voluntary Incentive Structure and Congressional Refusal to Require Pediatric Testing*, 40 HARV. J. ON LEGIS. 133, 184 n.458 (2003).

<sup>22</sup> See Comments on the Draft of the Chinese Renewable Energy Development and Utilization Law, [http://www.erec-renewables.org/documents/China/chinese\\_development.pdf](http://www.erec-renewables.org/documents/China/chinese_development.pdf) (documenting a workshop between the NPC and representatives of the European Renewable Energy Council and the European Wind Energy Association to comment on the NDRC’s draft of the Chinese Renewable Energy Development and Utilisation Law).

<sup>23</sup> For example, we wanted the law to indicate under what circumstances the Wind Concession Tendering process would apply and under what circumstances a feed-in tariff would

at NDRC/Energy Research Institute (“ERI”) mentioned to us that Chinese legislation often is accompanied by “implementation documents” that lay out some of the details and guidelines for implementation not contained in the law itself.

The Tsinghua University draft law benefited from all of the background documents and comments we prepared for the NDRC draft, but was more detailed than the NDRC version, including background research on Chinese resource availability and potential targets for various renewable technologies and applications. Now we had to wait and see what the Standing Committee would do with the drafts.

#### IV. THE RENEWABLE ENERGY LAW AND THE NPC PROCESS

##### A. THE P.R.C. LEGISLATIVE PROCESS IN GENERAL

The NPC is the highest organ of state power in the People’s Republic of China.<sup>24</sup> The Constitution charges it with the legislative power of the state, as well as the power to enact, amend, interpret and annul the Constitution.<sup>25</sup> NPC controls the State Council, the Supreme People’s Court, the Supreme People’s Procuratorate, and the Central Military Commission.<sup>26</sup> The NPC has a permanent body, the Standing Committee, responsible for interpreting and implementing the Constitution, as well as enacting, interpreting and amending laws.<sup>27</sup> The NPC, in turn, reviews, evaluates and ultimately approves the Standing Committee’s legislative activities during NPC’s annual two - three week session.<sup>28</sup>

A bill can be introduced to the NPC Standing Committee (“NPCSC”) by the Meeting of Chairmen of the NPCSC, the State Council, the Central Military Commission, the Supreme People’s Court, the Supreme People’s Procuratorate, the NPC special committees, and

---

apply to wind projects. Unfortunately, there was no guidance on this question included in the law. See The Center for Resource Solutions, *Renewable Energy Law of the People’s Republic of China*, Environment and Resources Committee of the National People’s Congress, February 2005, chapter 5, Art. 19, <http://www.resource-solutions.org/policy/china.htm> (follow “Unofficial English Translation of the Chinese Renewable Energy Law” hyperlink).

<sup>24</sup> XIAN FA [Constitution] art. 57 (P.R.C) (“CONST.”).

<sup>25</sup> CONST., arts. 58 and 62. Unlike in the U.S., Chinese courts do not have the power to interpret the Constitution. This power belongs to the NPC and its Standing Committee alone.

<sup>26</sup> JAMES M. ZIMMERMAN, CHINA LAW DESKBOOK, A LEGAL GUIDE TO FOREIGN-INVESTED ENTERPRISES 52 (Am. Bar Ass’n, 2d ed. 2005).

<sup>27</sup> CONST., art. 58; ZIMMERMAN, *supra* note 29 at 53.

<sup>28</sup> CONST., art. 58; ZIMMERMAN, *supra* note 29 at 53.

## 422 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36]

ten or more NPCSC members jointly.<sup>29</sup> After introduction, if accepted by the Meeting of the Chairmen of the NPCSC, the bill is placed on the agenda or referred to a special committee for consideration first.<sup>30</sup> Legislation proposed by the Meeting of the Chairmen of the NPCSC goes to the agenda automatically.<sup>31</sup> If referred to a special committee first, the sponsors of the bill may be invited for a hearing.<sup>32</sup> Once on the agenda, the deliberation begins.<sup>33</sup>

In the Chinese legislative system, before a bill becomes subject to vote, it goes through a three-step examination, the so-called “three readings.”<sup>34</sup> The first reading is comprised of the introduction of the bill by the sponsor, and by the NPCSC subsequently discussing the bill in groups.<sup>35</sup> At the second reading amendments are discussed before the full session and then again in groups, if necessary.<sup>36</sup> If controversies arise and are not resolved, the bill goes into the third step of examination.<sup>37</sup> Group discussions continue and the bill sponsor’s representatives are expected to join in the discussion and answer any questions the groups may have.<sup>38</sup> Moreover, related institutions and organizations are also expected to provide consultation on the bill under discussion.<sup>39</sup>

In general, each bill on the NPCSC’s agenda goes through group examinations and receives a “specialized examination” by the special committees concerned.<sup>40</sup> The opinions of parties, which have been expressed in various fora, debates and hearings are collected by the Legislative Work Committee, the relevant special committees and the operations of the NPCSC.<sup>41</sup> If a draft bill is important, it will, upon approval by the Meeting of the Chairmen, be publicized to seek public

---

<sup>29</sup> See Legislation of NPC and Its Standing Committee, <http://www.china.org.cn/english/kuaixun/76337.htm#c5>. This is the authorized government portal site to China, published under the auspices of the China International Publishing Group and the State Council Information Office in Beijing.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Legislation of NPC and Its Standing Committee, <http://www.china.org.cn/english/kuaixun/76337.htm#c5>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See Legislation of NPC and Its Standing Committee, <http://www.china.org.cn/english/kuaixun/76337.htm#c5>.

opinion and the opinions will then be fed back to the NPCSC.<sup>42</sup> The Meeting of the Chairmen in a full session of the NPCSC then makes the final decision on the fate of the bill, i.e. whether it is withdrawn or whether it goes for a vote.<sup>43</sup> The draft becomes law once the majority of the NPCSC members mark it at the full session, and once it is then promulgated by decree signed by the President of the People's Republic of China.<sup>44</sup>

#### B. PASSING OF THE RENEWABLE ENERGY LAW

The Renewable Energy bill was introduced by Mr. Mao Rubai (Chairman of the Environmental and Resources Protection Committee). Mr. Sheng Huaren (Vice Chairman and Secretary General of the NPC Standing Committee) approved it onto the legislative agenda via the automatic track described above. The NPC Environment and Resource Protection Committee was the special committee in charge of developing the law, and Law Committee was charged with reviewing the proposed law.<sup>45</sup>

In August 2004, the NPC Environment and Resources Protection Committee (the first to officially review the drafts from NDRC/ERI and Tsinghua University) released a consolidated “official” draft. The title of this draft was “The Renewable Energy Law of the People’s Republic of China,”<sup>46</sup> rather than the previous title of “Renewable Energy and Utilization Promotion Law.”<sup>47</sup> We thought possibly this was a difference in translation of the title but were later informed that in the Chinese legal system, a “promotion” law, though not a separate category of law, is less strict than a full law.<sup>48</sup> A promotion law requires voluntary action whereas all requirements in a full law have to be implemented and are compulsory.<sup>49</sup> Therefore this change of name for the renewable energy law was significant. We never knew exactly how this change came

---

<sup>42</sup> *Id.* Theoretically at least. In practice, “[m]ost Rules and Normative Documents are made without the benefit of public participation or hearings attended by interested parties [and] [p]ublication also remains a problem.” PEERENBOOM, *supra* note 14 at 213.

<sup>43</sup> Legislation of NPC and Its Standing Committee, <http://www.china.org.cn/english/kuaixun/76337.htm#c5>.

<sup>44</sup> *Id.*

<sup>45</sup>

<http://www.npc.gov.cn/zgrdw/english/organization/specialCommittees/fucionAndResponsibility.jsp>.

<sup>46</sup> The Center for Resource Solutions, *supra* note 23.

<sup>47</sup> *Supra* note 22.

<sup>48</sup> As per the author’s conversations.

<sup>49</sup> As per the author’s conversations.

424 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

about or who decided to change the level of importance, but to Chinese persons knowledgeable about such matters, it was a signal that renewable energy had become increasingly important within the Chinese government.

This August 2004 draft was more consistent with the NDRC/ERI draft than the one developed by Tsinghua University. It was publicly released with a request for comments to the NPC within the next 30 days. We again organized international reviewers and submitted comments on behalf of a number of groups that reinforced support for the renewable energy law while once again suggesting some clarifying and more specific language in some of the sections to assist with implementation.<sup>50</sup>

In mid-December 2004, the Environment and Resource Protection Committee convened and passed the law out of committee with a unanimous vote. We were startled by the speed and level of support for renewables represented by this prompt vote, but this was after all the “Environment Committee.”<sup>51</sup> We figured things were likely to slow down as the Renewable Energy Law moved on to the Economic Law Committee and through the rest of the process.

The “Authorized Release” of the Renewable Energy Law was to be reviewed by the NPC Economic Law Committee at the end of January 2005. This new version of the law caused us some concern. The renewable energy targets that had been contained in previous versions of the law were now removed entirely and the penalties for non-compliance were significantly lower than in previous drafts that we had seen.<sup>52</sup>

We did not expect a vote to be called on the new draft for a month or two when, to our surprise, the Economic Law Committee met and voted on the law on February 28, 2005.<sup>53</sup> Even more amazing, we were told the process was over and the law was now approved. After being solidly approved by the Economic Law Department of the Standing

---

<sup>50</sup> The international reviewers included the Center for Resource Solutions, the Center for Solar Research and Hydrogen Research Baden-Württemberg, the National Renewable Energy Laboratory, and the Worldwatch Institute.

<sup>51</sup> ZIMMERMAN, *supra* note 26 at 753-754. In the past, “China’s economic policies emphasized the development of heavy industry rather than the conservation of natural resources or protection of the environment...[However] In recent years, China has focused more attention on environmental protection and is increasingly investing a greater share of the GDP on pollution control and enforcement measures. The NPC also demonstrates the importance of environmental issues by elevating the State Environmental Protection Bureau to a ministry-level ‘administration’ entity in March of 1998. The entity is now known as the State Environmental Protection Administration (SEPA) and has greater powers over enforcement matters.” *Id.*

<sup>52</sup> As per the author’s conversations, it was explained that including targets within the actual law itself was not the way Chinese laws are traditionally written. The Legal Committee did not want to set a precedent with this law that could result in a major change to the system.

<sup>53</sup> [http://nyj.ndrc.gov.cn/zywx/t20051104\\_48318.htm](http://nyj.ndrc.gov.cn/zywx/t20051104_48318.htm).

Committee, it was then approved by the full Standing Committee of the National People's Congress by an almost unanimous vote<sup>54</sup> (we heard later that one person forgot to press the button). Though a law usually requires three readings by the NPC Standing Committee before it is approved and becomes a law, in this case, because of the strong support for it, the Renewable Energy Law was passed after only two rounds of reading.<sup>55</sup>

We had another surprise when we saw the final approved draft. It contained the strongest penalties for non-compliance ever included in any of the previous drafts: “those who refuse to rectify the situation shall be fined an amount that does not exceed twice the economic loss incurred by the renewable energy enterprise.”<sup>56</sup>

The bill was passed just eighteen months after the Renewable Energy Law was first posted as part of the NPC's upcoming legislative agenda, and only seven months from the time the two draft law proposals had been submitted to the NPC Standing Committee for consideration. For the Chinese legislative process, and even the legislative process of the United States, this is record speed.<sup>57</sup>

In California, a bill of this nature would often be introduced in one two-year legislative session and fail to pass the first time. It would be resubmitted with some modifications, and maybe pass during the third or fourth years after it was first introduced.<sup>58</sup> In the United States Congress, energy legislation can sometimes languish for a decade or more.

The China Renewable Energy Law was scheduled to take effect January 2006. The next ten months of 2005 would require extensive, concentrated work by NDRC and others to complete the implementation documents necessary to put the legislation into place.

<sup>54</sup> China to Boost Use of Renewable Energy by Law, Embassy of the People's Republic of China in the United States of America, <http://www.china-embassy.org/eng/xw/t190285.htm>.

<sup>55</sup> [http://nyj.ndrc.gov.cn/zywx/t20051104\\_48318.htm](http://nyj.ndrc.gov.cn/zywx/t20051104_48318.htm).

<sup>56</sup> The Center for Resource Solutions, *supra* note 23, ch. 7, arts. 29, 30, 31.

<sup>57</sup> One would also expect that the speed of the bill's passage reflected support for the Renewable Energy Law from high levels within the Chinese government. *See* Legislature Passes Renewable Energy Bill, [http://www.chinadaily.com.cn/english/doc/2005-03/01/content\\_420450.htm](http://www.chinadaily.com.cn/english/doc/2005-03/01/content_420450.htm). (quoting Li Congjun, a Standing Committee member, “The development and use of renewable energy has special importance because China is a developing country with severe energy shortages.”)

<sup>58</sup> It took two sessions of the California Legislature (four years) to pass the California RPS legislation. Senate Bill 1078 was passed on September 12, 2002, *see* <http://www.energy.ca.gov/portfolio/index.html>. However, the Senate Committee on Energy, Utilities and Communications introduced Assembly Bill 1202, which mandated the establishment of a renewable portfolio standard, in 1996. S. COMM. ON ENERGY, UTILITIES AND COMMUNICATIONS, Comm. Rep. for 1995 Cal. AB 1202. National RPS legislation of one type or another has been considered for the last eight years and has still not been passed.

## 426 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36]

## V. THE FINAL RENEWABLE ENERGY LAW

The Renewable Energy Law that was adopted retained most of the topic areas that we had included in the framework list fourteen months earlier.<sup>59</sup>

*Chapter 1. General Principles*

This chapter includes the purpose of the law,<sup>60</sup> the eligible resources,<sup>61</sup> identifies renewable energy as a Government priority,<sup>62</sup> and identifies the State Council and relevant agencies (e.g. NDRC, the Energy Bureau, and Price Bureau)<sup>63</sup> as responsible for centralized management and national renewable energy development and utilization.<sup>64</sup>

*Chapter 2. Resource Management and Development Plan*

This chapter includes a requirement for development and release of renewable energy resource surveys,<sup>65</sup> establishment of a mid- and long-term national renewable energy development target,<sup>66</sup> as well as mid- and long-term targets in each administrative region of China.<sup>67</sup> In conjunction with the resource plans and renewable energy targets, the relevant agencies are to design a national plan for renewable energy development and utilization and implement it upon approval of the State Council.<sup>68</sup> In addition, local government agencies (e.g. provincial and municipality) are to design a plan for renewable energy development in their jurisdictions consistent with the national plan.<sup>69</sup>

---

<sup>59</sup> The Center for Resource Solutions, *supra* note 23.

<sup>60</sup> *Id.* at ch. 1, art. 1.

<sup>61</sup> *Id.* at ch. 1, art. 2.

<sup>62</sup> *Id.* at ch. 1, art. 4.

<sup>63</sup> *Id.* at ch. 1, art. 5.

<sup>64</sup> The Center for Resource Solutions, *supra* note 23 at ch. 1, art. 2. “The application of this law to hydropower shall be stipulated by the energy department in charge in the State Council and be submitted to the State Council for approval. This law does not apply to utilization of crop stalks and straw, fuel wood and manure by direct burning in low efficiency stoves.” It is our understanding that none of the incentive programs (including the feed-in tariff) applies to large hydro though large hydro is included in the overall “energy” target but not the electricity targets being developed by NDRC.

<sup>65</sup> The Center for Resource Solutions, *supra* note 23 at ch. 2, art. 6.

<sup>66</sup> *Id.* at ch. 2, art. 7.

<sup>67</sup> *Id.*

<sup>68</sup> The Center for Resource Solutions, *supra* note 23 at ch. 2, art. 8.

<sup>69</sup> *Id.*

*Chapter 3. Industry Guidance and Technology Support*

This chapter includes provision for developing technical standards for renewable technologies and products,<sup>70</sup> directs government to prioritize RD&D and commercialization development into the national plan and allocate capital for its support.<sup>71</sup> Finally the education administrative agency is directed to incorporate knowledge on renewable energy into general and occupational education curricula.<sup>72</sup>

*Chapter 4. Promotion and Application*

This chapter includes language of Government encouragement and support for grid-connected renewable power generation.<sup>73</sup> It also directs power grid enterprises to sign grid connection agreements with renewable generation enterprises, as well as purchase all the power that is generated and provide grid connection services and support.<sup>74</sup> This section also includes language expressing government support for: “off-grid renewable power generation systems;”<sup>75</sup> high-efficiency development and use of biomass fuels and energy crops;<sup>76</sup> biological liquid fuels;<sup>77</sup> solar water heating and cooling, PV generation and other solar energy utilization systems;<sup>78</sup> and the utilization of renewable energy in rural areas.<sup>79</sup> Petroleum selling companies and gas pipeline grid and heat grid operations are directed to accept biological fuels that meet the national standard.<sup>80</sup>

*Chapter 5. Price Management and Cost Sharing*

This chapter deals with the establishment and adjustment of feed-in tariffs for renewable energy generation projects, and integration of the Wind Concession projects into the tariff scheme.<sup>81</sup> Above market renewable energy costs “. . . shall be shared as a surcharge in the

---

<sup>70</sup> The Center for Resource Solutions, *supra* note 23 at ch. 3, art. 11.

<sup>71</sup> The Center for Resource Solutions, *supra* note 23 at ch. 3, art. 12.

<sup>72</sup> *Id.*

<sup>73</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 13.

<sup>74</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 14.

<sup>75</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 15.

<sup>76</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 16.

<sup>77</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 16.

<sup>78</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 17.

<sup>79</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 18.

<sup>80</sup> The Center for Resource Solutions, *supra* note 23 at ch. 4, art. 16.

<sup>81</sup> The Center for Resource Solutions, *supra* note 23 at ch. 5, art. 19.



## 428 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36]

electricity-selling price.”<sup>82</sup> This also allows the recovery of “reasonable grid connection costs . . . and other reasonable costs can be calculated in the cost of electricity transmission for the enterprise and can be recovered from electricity sales price.”<sup>83</sup> Finally, this Chapter includes directions for calculating the electricity sales price for “independent renewable energy power systems established through Government investment or subsidies,”<sup>84</sup> as well as the price of heat and fuel gas from renewable energy sources.<sup>85</sup>

*Chapter 6. Economic Incentives and Supervision Measures*

This chapter describes the Government budget and special capital for renewable energy: (1) RD&D;<sup>86</sup> (2) projects for domestic use in rural and pastoral areas;<sup>87</sup> (3) construction of independent renewable power systems in remote areas and islands;<sup>88</sup> (4) resource surveys and assessment and relevant information system building;<sup>89</sup> and (5) promoting the localization of renewable energy equipment manufacturing.<sup>90</sup> This chapter also allows preferential loans with interest subsidies,<sup>91</sup> development of tax benefits for eligible projects,<sup>92</sup> and directs electricity enterprises to keep accurate and complete records of relevant information and accepting investigation and supervision from relevant agencies.<sup>93</sup>

*Chapter 7. Legal Liabilities*

This chapter deals with penalties for non-compliance making it a crime that will be prosecuted for above-county level government and other relevant agencies that: (1) Fail to make decisions on administrative approval according to law;<sup>94</sup> (2) fail to conduct investigation after

---

<sup>82</sup> The Center for Resource Solutions, *supra* note 23 at ch. 5, art. 20.

<sup>83</sup> The Center for Resource Solutions, *supra* note 23 at ch. 5, art. 21.

<sup>84</sup> The Center for Resource Solutions, *supra* note 23 at ch. 5, art. 22.

<sup>85</sup> The Center for Resource Solutions, *supra* note 23 at ch. 5, art. 23.

<sup>86</sup> The Center for Resource Solutions, *supra* note 23 at ch. 6, art. 24.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> The Center for Resource Solutions, *supra* note 23 at ch. 6, art. 25.

<sup>92</sup> The Center for Resource Solutions, *supra* note 23 at ch. 6, art. 26.

<sup>93</sup> The Center for Resource Solutions, *supra* note 23 at ch. 6, art. 27.

<sup>94</sup> The Center for Resource Solutions, *supra* note 23 at ch. 7, art. 28.

noticing illegal acts;<sup>95</sup> and/or (3) other acts of failing to carry out supervision and management responsibilities.<sup>96</sup> This chapter also establishes penalties for non-compliance by power grid enterprises, enterprises that operate fuel gas pipeline and heat grids, and petroleum selling companies that fail to comply with relevant Articles. Those enterprises that refuse to rectify the situation will be fined an amount that may not exceed twice the economic loss incurred by the relevant enterprise.<sup>97</sup>

#### *Chapter 8. Explanatory Notes*

This chapter includes some definitions,<sup>98</sup> and states “This law shall come into force on January 1, 2006.”<sup>99</sup>

In considering all the chapters in total, there were a number of places where we would like to have seen additional language. But the final draft of the law covered all of the important topic areas we thought should be included. And maybe we will see the other details we argued for contained in the implementation documents. As of the end of January 2006, we have still not seen these final implementation documents.<sup>100</sup>

#### VI. THE ROAD AHEAD

Since the law was passed in February 2005, we have worked with NDRC/ERI staff on the methodology and calculation of the feed-in tariffs as well as providing background on special renewable energy funds (such as public benefit funds), and international experience with renewable energy tax benefits of various kinds.

We are looking forward to seeing the official renewable energy targets when they are released. We have been told that they are five percent renewable energy by 2010 and fifteen percent renewable energy by 2020 with specific technology targets for electricity generation that include: 120 GW of renewable energy by 2020 (12% capacity, 7-8% energy); including 70 GW of Small Hydro; 30 GW of Wind; 20 GW of

---

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> The Center for Resource Solutions, *supra* note 23 at ch. 7, art. 31.

<sup>98</sup> The Center for Resource Solutions, *supra* note 23 at ch. 8, art. 32.

<sup>99</sup> The Center for Resource Solutions, *supra* note 23 at ch. 8, art. 33.

<sup>100</sup> [http://www.ndrc.gov.cn/zcfb/zcfbtz/zcfbtz2005/t20060206\\_58705.htm](http://www.ndrc.gov.cn/zcfb/zcfbtz/zcfbtz2005/t20060206_58705.htm).

430 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

Biomass; and 1 GW of Solar.<sup>101</sup>

This year we expect to continue working with our Chinese colleagues on the implementation of this monumental piece of legislation. It has been an exciting two years. California both officially and unofficially has played a key role in the development of China's Renewable Energy Law. Passage of China's Renewable Energy Law has probably influenced some of the plans for renewable energy development in California as well. The proof of the pudding is always in the eating and we will not really be able to evaluate the success of the law until it is actually implemented and has had a few years of to generate results. Nonetheless, it is off to a good start and we are pleased we were able to contribute to the "California Connection" for renewable energy development in China.

---

<sup>101</sup> As per Author's conversation with Chinese officials.