**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking to Continue Implementation and Administration of California Renewable Portfolio Standard Program. | R.11-05-005<br>Sec. 399.20 program<br>(Filed July 21, 2011) |

# OPENING COMMENTS OF AGPOWER GROUP, LLC ON ADMINISTRATIVE LAW JUDGE'S RULING SETTING FORTH IMPLEMENTATION PROPOSAL FOR SB 32 AND SB 2 1X AMENDMENTS TO SECTION 399.20

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Pursuant to Administrative Law Judge Regina DeAngelis' *Ruling Setting Forth Implementation Proposal For SB 32 and SB 2 1X Amendments To Section 399.20* issued June 27, 2011 ("ALJ's Ruling"). AgPower Group, LLC ("AgPower") hereby submits these comments in accordance with the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure.

## I. INTRODUCTION.

It is important for the developer of a renewable energy project to know as early in the process as possible what the implementation of the amendments to §399.20 in SB 32 and SB 2 1X will be. Otherwise, the entire development process could be halted. After two and one-half years in the permitting process, AgPower is now prepared to begin its first project in California as soon as a Commission decision is issued to implement the new feed-in tariff. If implementation is not achieved prior to the end of 2011, project economics will change significantly and force AgPower and other developers to reevaluate the viability of their California projects.

One of AgPower Group's owners is Camco International Group, Inc. (Camco), a renewable energy and greenhouse gas offset firm with business in California. Camco has listed approximately 10% of all the carbon offset projects in the Climate Action Reserve registry and sells carbon offsets to California firms. Camco's experience with renewable power markets and policies includes work done by its affiliates for the European Commission as well as designing the renewable feed in tariff programs in South Africa, Uganda and Botswana. This experience informs AgPower's position that base load renewable power development can only grow to its potential if the Commission completes its work to simplify the contracting and interconnection processes and establish feed in tariff certainty that is commensurate with project economics, environmental benefits, electric system benefits and the financing structures available to the development community.

## II. INITIAL RESPONSES TO QUESTIONS ASKED IN THE ALJ'S RULING.

AgPower's initial responses to the specific questions set fort in the AL's Ruling are provided in Attachment 1 to these comments. More complete responses will be provided in Reply Comments, if appropriate, and are expected to be topics of detailed discussion among stakeholders at workshops scheduled in August 2011.

## III. CONCLUSION.

AgPower appreciates the opportunity to submit these comments on the ALJ's Ruling.

Respectfully submitted,

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# ATTACHMENT 1

1. Please define market price of electricity as used in § 399.20. Is there one market price of electricity relevant to all types of electricity procurement or are their different market prices depending on the type of electricity that is being procured? For example, is there a unique market price of electricity for the market segment targeted in § 399.20? Does the market price of electricity include all types of electricity contracts and technologies that a utility procures or a subset of contracts and technologies? If you propose a subset, please define the subset.

ANSWER: There is not one market price for all types of electricity procurement because §399.20 stipulates market price must consider environmental compliance costs including greenhouse gas emissions as well as the cost of long-term ownership, operations, and fixed-price fuel costs associated with long-term fixed price power purchase agreements. The different types of power generating facilities, whether combined cycle gas-fired, AgPower Group's manure-derived biogas, or other renewables project types each have distinct and significant differences. Briefly these include construction costs per unit of capacity, financing costs arising from the financing structures and project risks perceived by investors and debt providers, the cost of environmental compliance, time of day and locational differences, and the environmental benefits derived from different types of generating facilities.

2. Explain whether the price for electricity purchased under § 399.20(d), as amended by SB 2 1X, must or should be based on the MPR as currently calculated.

ANSWER: Once the Legislature determined that California consumers must be provided with renewable power under SB 32 and SB 2 1X and determined that California must reduce its greenhouse gas emissions under AB32 it created important distinctions between the type of generating facility contemplated in the current MPR and all other renewable generating facilities.

3. Explain whether the price for electricity purchased under § 399.20(d) must or should be based on the MPR as currently calculated with the addition of new adders, as suggested by parties in the March 2011 briefs.

ANSWER: AgPower believes that adders are one of several methods that may be used to encourage utilization of renewable resources in California to benefit California consumers. AgPower does not believes that separate rates for different types of renewable facilities can create inefficiencies in capital deployment and may not procure the most environmental and other benefits for California consumers at optimum cost and risk.

4. Explain the benefits and the drawbacks of continuing to use the MPR as the basis of the price for the program under § 399.20 given the statutory changes.

ANSWER: The benefits are that the characteristics of the type of facility on which the current MPR was based are well known. However, its main drawback is that a gas-fired combined cycle facility of 500MW is not a renewable power facility and cannot ever help California utilities meet their RPS requirements. It is simply a useful benchmark. Another shortcoming is that a 500MW facility enjoys many economies of scale that are simply not available to smaller generating facilities of all types, whether renewable or not. For this reason AgPower believes the MPR must be revised to more accurately reflect the cost of developing and operating renewable generating facilities.

5. Explain whether a new trigger for an MPR update is necessary and/or a schedule for how the MPR should be updated going forward.

ANSWER: AgPower believes that the Commission may want to revise the MPR from time to time, however a revision process that leaves uncertainty about rates that developers may expect to receive will stifle renewable capacity development just as it has up to now.

6. Based on your definition of "market price of electricity," explain whether a technology-specific or product-specific proposal is a viable option for the § 399.20 program as updated by the SB 2 1X amendments.

ANSWER: AgPower believes that it is difficult to set technology specific market prices for facilities that have yet to be built. We also believe it is very difficult to distinguish among different technologies without considering project risk and without the Commission inadvertently endorsing or disadvantaging project developers, manufacturers, or technology suppliers. It seems to AgPower that setting a market price for renewable electricity relative to fossil fueled electricity of similar scale is much simpler.

AgPower is not able to comment on product specific market prices at this time.

7. Explain the specific methodology and all calculations and data that would be required to implement the technology or product-specific rate that you propose.

ANSWER: AgPower has not proposed a rate at this time.

8. If applicable, identify what specific subset of proxy plants is appropriate for the calculation of rates.

ANSWER: AgPower has no comment regarding proxy plants at this time.

9. If you support a competitive auction approach please explain why. Discuss whether and how this approach is consistent with the provisions in § 399.20(f). Also explain the mechanisms of how a competitive auction would be used to determine the price.

ANSWER: AgPower does not support a competitive auction because it does not create the price certainty that the developer community requires to attract financing and encourage necessary counterparties to enter into supply and lease agreements.

10. Using your definition of the market price of electricity, explain whether a rate under § 399.20(d) should be based on RPS power purchase agreement prices. If you support this methodology, identify what subset of power purchase agreements is appropriate for the calculation, whether the price should be the weighted average of PPA prices or some other price point, and provide specific recommendations and calculations, where appropriate and necessary to implement such a methodology. Lastly, articulate if there should be one rate or multiple rates. If you suggest multiple rates, define what the multiple rates should be and how they should be derived.

ANSWER: AgPower believes it is very difficult to determine the underlying project economics simply from PPA prices and project them into the future as reasonable expectations for future projects. Some of the reasons for this are lack of transparency regarding project financial structures, use of grants and other incentives that may not be available in the future, and the evolution of counterparty expectations as various types of projects become operational.

11. Provide all relevant details for other alternate pricing proposals, if any, consistent with the provisions of SB 2 1X.

ANSWER: AgPower has made no alternate proposal at this time.

12. Identify relevant data sources that could be used to implement any proposed methodology and whether the data used to calculate the rate should be derived from public or confidential data. Please comment on the appropriateness of the data sources as identified by parties in opening comments, such as Fuel Cell Energy and CALSEIA.

ANSWER: AgPower believes that public domain data would be adequate for any proposed methodologies.

13. Explain how often the price under § 399.20(d) should be calculated given your preferred price calculation approach.

ANSWER: AgPower has no comment at this time.

14. Respond to interpretations by CEERT, CALSEIA and Clean Coalition of "ratepayer indifference" and explain how the SB 2 1X amendments to § 399.20(d) and any new pricing proposal that you suggest pursuant to these amendments impact these interpretations.

ANSWER: AgPower is not prepared to comment at this time. .

15. Please comment on the impact of federal law on the implementation of § 399.20. and indicate how the impact of the impact of federal law on implementation of have changed, if at all.

ANSWER: AgPower is not prepared to comment at this time.

16. Please comment on the proposed provisions added to § 399.20 by SB 32 set forth below to be implemented by the end of 2011 and those provisions that are proposed to be addressed in 2012.

ANSWER: AgPower is not prepared to comment at this time.

17. Explain any issues to be considered on capacity limitation under this program and next steps necessary to implement the provision, as implementation of § 399.20(b)(2) tariff language and form contracts may need to be amended.

ANSWER: AgPower is not prepared to comment at this time.

18. Explain the drawbacks and benefits to relying on the existing methodology for calculation of proportionate share. Does the statute require a recalculation of proportionate share based on the addition of publicly owned utilities? Would the Commission's calculation of proportionate share for local publicly owned utilities be restricted by any jurisdictional limitations?

ANSWER: AgPower is not prepared to comment at this time.

19. The ruling proposes to implement this provision by end of 2011. Explain the next steps necessary to implement two tariff schedules.

ANSWER: AgPower is not prepared to comment at this time.

20. Explain the next steps necessary to consolidate rate schedules, what modification to tariffs are needed to reflect this change, and what changes to the form contract might be required.

ANSWER: AgPower is not prepared to comment at this time.

21. Please comment on the recommendation to provide maintenance reports every other year.

ANSWER: AgPower is not prepared to comment at this time.

22. Please comment on the recommendation to post tariff requests on the Internet.

ANSWER: AgPower is not prepared to comment at this time.

23. Identify any issues and explain why investor owned utility coordination with local publicly owned utilities would be helpful. Identify any potential matters that the Commission may address relative to § 399.20 that may impact the implementation of § 387.6.

ANSWER: AgPower is not prepared to comment at this time.

24. Please comment on this recommendation regarding termination of contracts by utilities, and explain the existing procedure relied upon by electric utilities to terminate contracts.

ANSWER: AgPower is not prepared to comment at this time.

25. Please comment on this recommendation to defer consideration of interconnection issues in 2012.

ANSWER: AgPower strongly opposes this recommendation because certainty and speed are critical to AgPower's project economics.

26. Please comment on the recommendation on adjustments for small electric utilities.

ANSWER: AgPower expresses no opinion on this issue.