BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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

NOTICE OF EX PARTE COMMUNICATION BY AGPOWER GROUP, LLC AND SUSTAINABLE CONSERVATION

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October 24, 2011

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In accordance with the provisions of Article 8 of the Rules of Practice and procedure of the California Public Utilities Commission, this notice of ex parte communication is provided by AgPower Group, LLC ("AgPower") and Sustainable Conservation ("SusCon"). On October 21, 2011, AgPower and SusCon representatives met with Carol Brown, President Peevey's Chief of Staff, Damon Franz, Energy Advisor to President Peevey, Scott Murtishaw, Energy Advisor to President Peevey, Bishu Chattergee, Energy Advisor to Commissioner Simon, Matt Tisdale, Energy Advisor to Commissioner Florio, Sara Kamins, Energy Advisor to Commissioner Ferron, and Michael Colvin, Energy Advisor to Commissioner Ferron.

The meetings took place at the Commission's office in San Francisco. The meeting with Carol Brown, Damon Franz, and Scott Murtishaw started at approximately 11:00 a.m. The meeting with Mr. Chattergee started at approximately 12:30 p. m. The meeting with Mr. Tisdale started at approximately 1:30 p.m. The meeting with Ms. Kamins and Mr. Colvin started at approximately 3:30 p.m. Each meeting lasted approximately 30 minutes. The communications at each meeting were oral and included copies of the attached written material.

AgPower was represented by Andrew Jackura, Senior Vice President North America Business Development, of Camco, and Robert Joblin, President of AgPower. Mark Fulmer of MRW was also in attendance. SusCon was represented by Stacey Sullivan, Policy Director. Don Liddell, counsel for AgPower, and Jody London, consultant to SusCon also participated in each meeting. The discussion concerned the practical inability of dairy biogas projects to participate in the Section 399.20 ("SB 32") program as currently proposed in the "FiT Staff Proposal – Revised Draft Energy Division Staff Proposal," October 13, 2011 ("Proposal").

AgPower and SusCon indicated that the Proposal is flawed in that its practical effect would be to exclude dairy biogas projects from participation in the Section 399.20 program. They also urged the Commission to provide assurances in its Proposed Decision in this proceeding that the SB 32 program will be considered *additive* to the AB 1969 program, with specific reference to the Southern California Edison CREST program that is the subject of Clean Coalition's "Motion for Immediate Amendments of AB 1969 CREST Power Purchase Agreement" that is pending before the Commission.

Copies of this ex parte notice can be obtained by calling or sending an email message to the undersigned at the address provided below.

Respectfully submitted,

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DESIGNING A FEED-IN TARIFF FOR DAIRY DIGESTERS

Overview:
California must have diversity within its renewable resource portfolio. Farm-scale biogas provides base load renewable energy and is a prime candidate for participation in a feed-in tariff, if the conditions are right. Senate Bill 32 is clear that the Feed-in Tariff must include a base load price and several adders that recognize the contributions of diverse renewable technologies. The proposal outlined below provides a formula the California Public Utilities Commission can adopt for all technologies. The presentation below is tailored to biogas.

Price Certainty is Critical:
Parties to R.11-05-005 have been asked to respond to a FiT pricing from the CPUC Energy Division. This proposal for Section 399.20 (Feed-in-tariff or "FiT") implementation essentially replicates the recently approved avoided cost-based Renewable Auction Mechanism ("RAM") program for projects up to 20MW, with the addition of a new and untried locational adder concept adder**.** No different weighting at all is assigned to environmental attributes for projects up to 3MW under the Energy Division's proposal. The notion of a set-aside or other mechanisms to acknowledge the very different cost profile of eligible renewable technologies is never mentioned.

This means that biogas/biomass projects that need a minimum of 14¢/kWh to cover operate costs will be require to compete with PV solar projects that can be expected to bid as low as 9¢/kWh. The avoided cost concept employed in the Staff proposal is based on the idea that renewables should compete based on bid price alone in a market that includes other technologies. This is the case with other RPS-type programs such as RAM, and ignores the actual costs and real environmental benefits of biogas/biomass projects. Applying time of day (TOD) factors and a split among base load, peaking and as-available resources, as the Staff proposal suggests, is not sufficient for base load technologies.

SB 2 1X will eliminate the current RPS cost containment provision, which requires the Commission to establish a total cost limitation for contracts with prices above a market price. With the amendments to Section 399.20 in SB 2 1X, the connection to the Market Price Referent must no longer apply. Rather than use the latitude given to the CPUC, consistent with PURPA, "*Staff's opinion is that while technology-specific pricing may be an option under § 399.20, the law does not direct it.*" This is very simply not a true FiT. The approach is also inconsistent with the letter and spirit of SB 32, and would defeat the purpose of the legislation. There are better ways to achieve ratepayer indifference while also maintaining compliance with FERC's avoided cost Orders.

Additionally, the Energy Division's proposal to address the interconnection-expediting requirement of Section 399.20 is to allow project developers to choose between Rule 21 and the Wholesale Distribution Open Access Tariff (WDAT). This choice is a false one because Rule 21 is being substantially reworked in a "settlement process" and in a new OIR that will take many months, or longer, to come to any closure. We appreciate the attention to interconnection. However, by determining that interconnection issues will now be removed from this proceeding and transferred to a different process of indefinite duration, the immediate practical effect will be to mandate use of the WDAT interconnection process for the foreseeable future.

The proposal to which parties have been asked to respond overlooks Section 399.20(d)(1) of the legislation, which requires that the renewable FIT payment rate be "the market price determined by the commission pursuant to Section 399.15," including "all current and anticipated environmental compliance costs including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located."

Section 399.20(d) authorizes the Commission to set a market price in consideration of: (1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission; (2) the long-term ownership, operating, and fixed price fuel costs associated with fixed-price electricity from new generating facilities; and (3) the value of different products including base load, peaking and as available electricity.

The Proposed Solution:
The proposal is based on one previously submitted by AgPower, and incorporates the ideas and comments of interested parties with biomethane as their reference point. The resource adequacy ("RA") adder and the avoided transmission and distribution components will vary among the three utilities and with the operating characteristics of the generator.

The proposed FiT pricing formula is:

$$FIT_{\text{hour } x} = \text{Base x (TOD factor }_{\text{hour } x}\text{) x (1+losses) + RCV + Avoided T\&D + RA value + quantifiable environmental benefits}$$

While the numbers in the table below are generally accurate, they are presented for illustrative purposes. Further refinements will be presented to the CPUC at the next opportunity.

Feed-in-Tariff Element, c/kWh	**PG&E**	**SCE**	**SDG&E**
Base	9.21	9.21	9.21
Above-Line Losses [2]	5.8%	5.8%	5.8%
Grosse up for losses	9.74	9.74	9.74
Renewable Content Value (RCV) [3]	5.00	5.00	5.00
Avoided Transmission [4]	0.25	0.30	0.27
Avoided Distribution [4]	0.73	0.39	0.68
Resource Adequacy Value [5]	0.52	0.52	0.52
VOC Savings at Dairies [6]	0.40	0.40	0.40
Other Environmental Benefits [7]	0.29	-0.06	0.41
TOTAL	**16.98**	**16.35**	**17.08**

Sources
1. 10-year contract beginning in 2012; no TOD factor
2. Based on 7.8% total T&D losses, as used in September 2010 Staff Report in SGIP modifications proceeding (R.10-05-004), page 58.
3. CALSEIA's Opening Comments, Attachment A, page 9.
4. Calculated from data used to evaluate the cost-effectiveness of demand response in A.11-03-001, et al.
5. AgPower Estimate for biogas generator
6. AgPower Estimate for biogas generator
7. CALSEIA's Opening Comments, Attachment A, 32. The value for PG&E is for the San Joaquin Valley. The value for PG&E not in the San Joaquin valley is -0.04¢/kwh