

**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 May 10, 2011)

**INITIAL COMMENTS OF AGPOWER GROUP, LLC TO ADMINISTRATIVE
LAW JUDGE'S RULING (1) ISSUING STAFF PROPOSAL (2) ENTERING
STAFF PROPOSAL AND OTHER DOCUMENTS INTO THE RECORD
AND (3) SETTING COMMENT DATES**

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In accordance with the *Administrative Law Judge’s Ruling (1) Issuing Staff Proposal, (2) Entering Staff Proposal and Other Documents into the Record, and (3) Setting Comment Dates*, issued on October 13, 2011 (“ALJ’s Ruling”), AgPower Group, LLC (“AgPower ”) submits these Initial Comments on the “Revised Draft Renewable FIT Staff Proposal” attached to the ALJ’s Ruling (“Staff Proposal”). As requested by the ALJ, the following comments are organized consistent with the Staff Proposal.

I. INTRODUCTION

The Commission must make a policy decision to implement Pub. Util. Code §399.20 (“SB 32”) to incent dairies to use digester biogas on-site to generate electricity as part of California’s renewables portfolio standard (“RPS”) program. Doing so will help mitigate major persistent air quality and other environmental problems in the San Joaquin Valley and elsewhere in agricultural areas of California.¹ As written, the sole focus of the Staff Proposal on getting bottom dollar for electricity ratepayers will cost the loss of the environmental and other societal

¹ See, e.g., *San Joaquin Valley Air Pollution Control District, Air Pollution Control Officer’s Revision of the Dairy VOC Emissions Factor*, January 2010.

benefits of a feed-in tariff (“FiT”) for digester gas dairy projects and violate reasonable utility resource planning practices. The Commission must implement the Legislature’s clear mandate in SB 32 to fairly compensate digester gas dairy projects for benefits that only they can deliver to California.²

Electricity rate containment should not override, or “trump,” the diverse benefits that the Legislature expressly itemized in SB 32 to guide the Commission in determining “ratepayer indifference.”³ The benefits that must be balanced against holding the line on ratepayer electricity bills are real, and for the most part quantifiable - as evidenced only yesterday by U.S. Agriculture Secretary Vilsak’s statement in the USDA’s announcement of Rural Energy for America Program 2011 grant recipients:

“Since its creation this program has assisted almost 9,600 small businesses, farmers and ranchers and created or saved an estimated 15,000 jobs. It also provides producers with new opportunities to diversify revenue and make American agriculture and rural small business more competitive.” Funding for the biodigesters is provided through the USDA Rural Energy for America Program (REAP) and has created or saved an estimated 13.4 billion kWh of electricity and reduced almost 14.5 million metric tons of greenhouse gas emissions.”⁴

It is critical that the Commission recognize that none of the 19 projects receiving REAP grants or loans are in the largest dairy state in the nation - California. This highlights that practical realities of developing California’s dairy biogas resources and demonstrates that, even

² It appears from a side-by side comparison that the only material change from the original staff proposal to the Staff Proposal that relates to pricing is deletion of the following passage: “Additional CPUC Staff Conclusions: The language of P.U. Code §§399.20(d) and (e) provides significant specific guidance to the CPUC in establishing market prices for eligible generators, including examination of the value of different electricity products, including baseload, peaking, and as-available electricity. However, Staff’s opinion is that while technology-specific pricing may be an option under § 399.20, the law does not direct it.” (Original Draft Staff Proposal, p. 6).

³ Pub. Util. Code §390.20(d)(3). “The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff.”

⁴ <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/10/0461.xml>

with grant and loan assistance, California's incentive programs have been inadequate to stimulate investment in biogas projects.

Among others, the California Energy Commission has recently documented the importance of developing in-state biogas resources from agriculture.⁵ Farm-scale biogas provides base load renewable energy, and is perhaps *the* prime candidate for participation in a feed-in tariff - if the conditions are right. SB 32 is clear that the FiT must include both a base load price, and "adders" that recognize the contributions of diverse renewable technologies.

II. A GUIDING PRINCIPAL SHOULD BE THAT PRICE CERTAINTY IS CRITICAL TO SUCCESS OF THE SB 32 PROGRAM

The Staff Proposal inexplicably overlooks Pub. Util. Code §399.20(d)(1), which requires that the renewable FIT payment rate be "the market price determined by the commission pursuant to Pub. Util. Code §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.*"

Pub. Util. Code §399.20(d) authorizes the Commission to set a market price in consideration of the following: (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.

⁵ See, *20011 Bioenergy Action Plan Prepared by the California Energy Commission for the Bioenergy Interagency Working Group*, March 2011.

The Staff Proposal would merely replicate the Commission-approved avoided cost-based Renewable Auction Mechanism (“RAM”) program for renewable projects sized up to 20MW, with the addition of a new locational adder concept. No different weighting at all is assigned to environmental attributes for projects sized up to 3MW. No set-asides, separate bidding tracks, or other mechanisms to acknowledge the very different cost profile of the eligible renewable technologies that would be taking advantage of FiTs are considered.

The narrowly interpreted avoided cost concept employed in the Staff Proposal is premised on the idea that all projects sized up to 3 MW, including biogas projects, must compete based on bid price alone in a market that includes all other renewable technologies.⁶ This means that biogas projects that need a minimum of 14¢/kWh to cover operating costs must potentially compete strictly on price with some projects that may bid as low as 8¢/kWh (prior to application of time of day factors). This is how other RPS-type programs such as RAM operate, and completely disregards the actual costs and unique environmental benefits of digester gas dairy projects. The Commission must ensure that the SB 32 program is tailored to the actual and practical circumstances of the buyer, seller, and regulator. Applying time of day factors and allocation 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 market. With the amendments to Pub. Util. Code §399.20 contained in SB 2 1X, the connection to the Market Price Referent must no longer apply. However, rather than use the latitude given to the

⁶ The RAM will not provide the Commission with an accurate price. In the first auction, which is occurring now, the prices bid will include tax incentives available through the end of this year as part of the American Recovery and Reinvestment Act. These prices therefore will not reflect actual costs or the price needed for an identical project bid after the end of the year.

Commission, consistent with SB 32 and PURPA, “*Staff’s opinion is that while technology-specific pricing may be an option under § 399.20, the law does not direct it.*” This approach is would entirely defeat the purpose of SB 32. As explained below, there are better ways to achieve genuine ratepayer indifference while also maintaining compliance with FERC’s avoided cost Orders.

III. AGPOWER PROPOSES THAT AN AVOIDED COST-BASED PRICING METHODOLOGY SPECIFICALLY FOR BIOGAS PROJECTS SHOULD BE AN ELEMENT OF THE SB 32 PROGRAM.

The AgPower proposal described in these comments is based on the proposal previously submitted by AgPower, and incorporates the ideas and comments of stakeholders that use various forms of biogas as their reference point. AgPower’s proposed FiT pricing formula is as follows:

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

A resource adequacy (“RA”) adder and avoided transmission and distribution components will vary among the three utilities and with the operating characteristics of the specific generator. The numbers in Table 1, below are approximate, and are presented for illustrative purposes.

Table 1

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	16.93	16.29	17.02

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

The Staff Proposal aims to create a structure intended to insure “ratepayer indifference” when structuring the FiT. “Ratepayer indifference” occurs when a proposed resource is priced at or below what the utility would pay for identically- or comparably-positioned resource. The question then with respect to “ratepayer indifference” and the FiT is whether the prices coming out of the RAM, even when differentiated between on-peak, baseload and as-available products, are for resources that are comparably-positioned to those who would take advantage of the FiT. The simple answer is that they are not.

A utility uses a diverse portfolio of resources to meet the needs of its customers. Even if one resource is, at any given moment, least cost, that does not mean that it should set the price all other resources would have to meet. While the Staff Proposal acknowledges the difference between peaking and, non-peaking and baseload resources, that is only one dimension of diversity. Size matters. A fleet of smaller plants will lead to a more reliable system than one that relies upon few, larger ones. This is reflected the in the Governor’s distributed generation goals. Technology diversity matters. Relying upon only one or two technologies is poor planning, as unexpected regulatory or technological changes could occur, making a fleet of resources non-operational, more costly, or obsolete. Because a small, specialized renewable generator—such as a dairy-based biogas facility—does not have the same raw price profile as other, larger, technologies, does not mean they have no role in a balanced utility portfolio or that their mere presence violates “ratepayer indifference.”

Even so, AgPower’s view is that the utilities are already effectively purchasing biogas power at prices comparable to that proffered by AgPower. California utilities are purchasing biomethane—“green gas” from out-of-state suppliers, injecting it into interstate gas pipelines, transporting it to California, generating power from this green gas in plants in California, and claiming RPS credit for it. AgPower believes that this green gas is priced on the order of \$14/mmbtu (levelized). Table 2, below shows that power from this imported green gas is comparable to that for in-state generated biomethane power, but without the local benefits (jobs, local air quality improvement, etc.). If utilities are already purchasing green-gas based power at prices comparable to that proposed by AgPower, and that price is acceptable, i.e., it doesn’t violate the “ratepayer indifference” criteria, then there is no reason to reject AgPower’s proposed pricing for biogas-based generation on the grounds of ratepayer indifference.

Table 2

	Recommendation for PG&E in AgPower's 8/26 Reply Comments (p 9)	Base model using imported biogas @ \$14/mmbtu	Biogas generation per Bloomberg New Energy Finance 11/2010	"Renewable Price Referent" from AgPower's 8/26 Reply Comments (p 4)	Bottoms-up estimate for Biogas using RETI pro-forma model
Base	9.21	13.10	14.50	14.40	17.32
Incremental Line Losses	5.8%	5.8%	5.8%	5.8%	5.8%
Base price grossed up for losses	9.74	13.86	15.34	15.24	18.33
Renewable Content Value	5.00	n/a	n/a	n/a	n/a
Avoided Transmission	0.25	0.25	0.25	0.25	0.25
Avoided Distribution	0.73	0.73	0.73	0.73	0.73
RA Value	0.52	0.52	0.52	0.52	0.52
VOC Savings at Dairies	0.40	0.40	0.40	0.40	0.40
Other Environmental Benefits	0.29	0.29	0.29	0.29	0.29
TOTAL	16.93	16.05	17.53	17.43	20.52

IV. RESPONSES TO QUESTIONS POSED IN THE STAFF PROPOSAL

The following responses to questions posed in the Staff Proposal are organized so that the numbering system corresponds to the numbering system in the Staff Proposal.

RAM Pricing

1. *How should the CPUC set the price if an IOU does not execute any contracts in one or more product categories? For example, the IOU could use the price from another one of its product categories.*

Response: The price should be administratively determined and set higher than today's FiT because experience has demonstrated that it is inadequate to stimulate biogas project investment.

2. *How should the CPUC adjust the transmission part of the total RAM price if the generator only has a Phase I or System Impact Study, since the results of these studies are usually an overestimate of actual transmission costs?*

Response: This is another reason why the RAM is not an appropriate benchmark for the FiT. Because these projects are interconnecting at the distribution level, there should not be any transmission costs incurred.

Pricing Adders

3. *If the CPUC adopts the locational adder, what should the CPUC do to increase the probability that a distribution system upgrade will be deferred? Besides a locational adder, staff is not proposing other adders to the FIT price. If parties believe the Commission should consider other adders, then parties should address the following issues when suggesting an adder:*

Response: Parties submitted briefs on SB 32 implementation in March of this year. At that time, parties highlighted for the Commission the requirements in SB 32 to consider numerous additional factors:

399.20(d)(1) The payment shall be the market price determined by the commission pursuant to Section 399.15 and shall include 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.

(2) The commission may adjust the payment rate to reflect the value of every kilowatt-hour of electricity generated on a time-of-delivery basis. (emphasis added)

SB 32 also expresses the Legislature’s intent to prioritize renewable generation that: “Is strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers.”⁷

The Commission cannot now decide that these factors, which the Legislature deemed significant enough to merit being called out in SB 32, are immaterial.

4. *Does the technology have an incremental avoided cost compared to a RAM project in the same product category? If so, explain why.*

Response: RAM projects have transmission and distribution costs because they are generally larger than 3MW. Dairy biogas projects avoid VOC and greenhouse gas emissions and

⁷ § 399.20(b)(3).

lower water pollution risks while wind, solar, and biomass projects that are likely RAM participants do not.

5. *Is the adder avoiding a ratepayer cost? In staff's view, any additional FIT adder should avoid a ratepayer cost and not a more general societal cost since the statute requires that ratepayers be held indifferent to the FIT payments.*

Response: All ratepayers in California benefit from the reduced emissions and water pollution risks created by dairy biogas projects in the same way that renewable generation lowers criteria air pollutant and mercury emissions from coal-fired power generation. A ratepayer doesn't have to be in the same county to feel the benefit because the airsheds and watersheds are state resources.

6. *Can the adder be quantified? If so, suggest a method and the data sources for quantifying adder. Reference previous filings if applicable.*

Response: AgPower and CALSIEA have previously filed estimates of these benefits. The Commission should refer to CARB studies and the market for environmental commodities for additional information.

Pricing Trigger:

7. *Identify the strengths and weaknesses for each party's proposal listed in the staff proposal, and make a recommendation addressing the following issues:*
 - a. *Level of subscription that triggers price decrease*
 - b. *Amount that the price should be decreased*
 - c. *Time period without any or minimal subscription that the price should be increased*
 - d. *Definition of minimal subscription*

Response: The administratively determined price should be fixed for the term of the contract, with reasonable increases to compensate for the increased costs associated with the operation and maintenance of the facility producing the renewable energy.

FIT Contract

8. *Do parties agree or disagree with the Agricultural Energy California Association's proposed modifications to PG&E's contract?*

Response: AgPower agrees with AECA.

9. *If you seek additional modifications to PG&E's contract or any other contract filed in the record, identify the term, proposed change, and rationale in a matrix format. To ensure your recommendation receives full consideration, provide documentation or attestation to support your rationale. In addition, if you propose a modification, you should state if the language is from a previously approved contract and provide the citation. When reviewing contract language, staff considers the following guiding principles to determine if a change is warranted:*

- a. Term properly allocates risk between buyer, seller, and the regulator*
- b. Term minimizes transaction costs between buyer and seller*
- c. Term is financeable and provides regulatory certainty*

Response: The terms allocate risk adequately, although the seller bears most of the risk because the buyer can replace contract shortfalls in a reasonable time frame through a number of mechanisms.

Resource Adequacy

10. *How should the CPUC implement P.U. Code § 399.20 (i), which states: "The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380?"*

Response: Base load renewable generation must be afforded the same level of deference as fossil-fired base load resources. Biogas projects are proven to operate with over 92% availability due to the nature of the process and proven technologies employed by commercial developers like AgPower.

11. *Should this issue be addressed in other planning proceedings, such as the LTPP and RA proceedings? To what extent is there overlap with the Distribution Interconnection Settlement process? What is an appropriate interim approach? If you support addressing this issue in other, more appropriate proceedings, provide a rationale and an interim proposal to address this language before it is addressed elsewhere.*

Response: The Commission should address all issues related to the FiT in this docket. Parties are participating here with specific interest in the FiT, a contract vehicle for customers who have the ability to install distributed generation. These parties do not have the resources to monitor numerous Commission proceedings.

Implementing Strategically Located:

12. How should “strategically located” be defined and implemented?

Response: “Strategically located” must be an inclusive term that accommodates the resources that provide capacity at peak demand on a distribution circuit. This is a concept not embodied in the legislation and should be discarded. Distributed renewable generation is by default strategically located if there is an existing distribution circuit that the project will interconnect to because there is already a load on that distribution circuit. Any generation in excess of that distribution circuit’s load will flow to other distribution circuits which also have loads already connected so the distributed resource is also strategically located relative to those loads as well. The utilities only concern should be regarding the distributed resource’s effect on system reliability at the substation. The Commission must direct the utilities to make investments in reliability that are necessary to facilitate California’s policy and laws that seek to stimulate investment in distributed renewable generation.

13. Comment on the strengths and weaknesses of each option listed in the staff proposal. If you have an alternative proposal, explain the rationale and the data sources required to implement it.

Response: AgPower’s alternative proposal is discussed above.

V. **CONCLUSION**

AgPower appreciates the opportunity to submit these comments in response to the ALJ's Ruling and looks forward to working with the parties and the Commission going forward in this proceeding.

Respectfully submitted,



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AGPOWER GROUP, LLC

November 2, 2011

VERIFICATION

I, Donald C. Liddell, am counsel for the AgPower Group, LLC and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of the *Initial Comments of AgPower Group, LLC to Administrative Law Judge's Ruling (1) Issuing Staff Proposal, (2) Entering Staff Proposal and Other Documents into the Record and (3) Setting Comment Dates*, filed in R.11-05-005, 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.

Executed on November 2, 2011, at San Diego, California.



Donald C. Liddell
DOUGLASS & LIDDELL

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AGPOWER GROUP, LLC