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January 20, 2012

VIA MESSENGER

Assigned Commissioner Ferron
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: R.11-05-005 - Proposed SB 32 Feed-in Tariff Implementation

Dear Commissioner Ferron:

The undersigned join in urging the Commission to identify an alternate mechanism for determining the price of the Feed-in-Tariff (“FiT”) required by P.U. Code § 399.20, (or SB 32) for projects up to 3 MWs that has been proposed by the Commission’s staff. This proposal, which is the only proposal that staff has opened for discussion, would use the Renewable Auction Mechanism (“RAM”) adopted for Renewables Portfolio Standard (“RPS”) eligible projects up to 20 MWs in size. Instead of proceeding on the current course, the Assigned Commissioner should grant the Joint Motion that was filed by the undersigned in response to suggestions by Energy Division and other appropriate Commission staff in December 2011 (“Joint Motion”).¹ While the RAM may be an appropriate mechanism for some RPS projects, it is not suitable or compliant with the statutory requirements for a *FiT*. Section 399.20 requires a true *administratively determined* FiT offered on a first-come-first-served basis. If the Commission adopts the Staff Proposal, it would utterly defeat the purpose of SB 32.

The Commission is already on record in declaring that RAM fundamentally differs from a FiT since RAM “relies on market-based pricing, utilizes project viability screens, and selects projects based on least cost *rather than* on a first-come first-served basis at an administratively determined price.” Parties have provided source data and proposals as a basis for deriving prices by using both renewable and non-renewable base prices and adjustments to reflect the avoided cost and value to ratepayers of attributes that must be taken into account by the Commission. There is also nothing preventing the Commission from using available data and accepted analytical methods to set FiT prices that are differentiated by technology type and project size, pursuant to guidance by the Federal Regulatory Energy Commission (“FERC”) for avoided cost prices adopted in compliance with state law.

¹ The Joint Motion filed by the undersigned is located at <http://docs.cpuc.ca.gov/efile/MOTION/155924.pdf>

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In fact, the RAM-based Staff Proposal inexplicably fails to address P.U. Code §399.20(d)(1), which expressly requires FIT pricing to take account of “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.” This essential fact alone is a fatal flaw in the Staff Proposal as a matter of law and good public policy.

There are also basic practical flaws in trying to force use of the RAM model down to 3 MW and below. First, the premise that a price-only RAM auction open to projects up to 20 MW is the most relevant market segment for pricing SB 32 compliant base load renewable resources is incorrect. The most relevant market segment for pricing SB 32-compliant renewable generation is the market for similar-sized resources for specific generation output categories. Second, the results from the RAM auction in November have not been announced, and consequently there is no basis for determining whether the bids in the RAM process will even resemble a relevant renewable market segment for pricing FiT resources in the RPS.

At this point, the undersigned urgently request the Commission to forestall the issuance of any Proposed Decision based on or adopting the Staff Proposal in its current form. Instead, the Commission should direct the Staff to prepare an *Alternate Proposal* for consideration in a workshop that offers a FiT based on administratively determined, avoided cost pricing consistent with all requirements of Section 399.20. There have been claims filed by parties in response to the Joint Motion that the approach articulated in the Alternate Proposal has already been considered. This is not true. It will be through the workshop requested in the Joint Motion, not by passing reference to alternatives to the RAM that the Commission should determine the merits and legality of the correct approach to implementing SB 32. The Commission must, as a matter of sound public policy and procedure, consider the full range of options.

Thank you for your consideration of our concerns.

Sincerely,

**CENTER FOR ENERGY EFFICIENCY AND AGPOWER GROUP, LLC
RENEWABLE TECHNOLOGIES**

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SUSTAINABLE CONSERVATION

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FUEL CELL ENERGY, INC.

BY /s/
 MICHAEL LEVIN

BY: /s/
 TRACY REID

TITLE: DIRECTOR, GOVERNMENT AFFAIRS

TITLE: VICE PRESIDENT WESTERN REGION

cc: All parties on service list for Docket No. R.11-05-005
The Honorable Michael R. Peevey, President
The Honorable Timothy Alan Simon, Commissioner
The Honorable Catherine J. K. Sandoval, Commissioner
The Honorable Michael Peter Florio, Commissioner
Ed Randolph, CPUC, Energy Division Director
Nancy McFadden, Governor's Office, Appointments and Policy
Karen Ross, Secretary of the California Department of Food and Agriculture
Julia Levin, California Natural Resource Agency, Deputy Secretary for Climate Change