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 (Filed May 10, 2011)

COMMENTS OF AGPOWER GROUP, LLC TO PROPOSED DECISION REVISING FEED-IN TARIFF PROGRAM, IMPLEMENTING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.20 ENACTED BY SENATE BILL 380, SENATE BILL 32, AND SENATE BILL 2 1X AND DENYING PETITIONS FOR MODIFICATION OF DECISION 07-07-027 BY SUSTAINABLE CONSERVATION AND SOLUTIONS FOR UTILITIES, INC.

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In accordance with Rule 14.3 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, AgPower Group, LLC ("AgPower") submits these comments to *Proposed Decision Revising Feed-In Tariff Program, Implementing Amendments To Public Utilities Code Section 399.20 Enacted By Senate Bill 380, Senate Bill 32, And Senate Bill 2 1x And Denying Petitions For Modification Of Decision 07-07-027 By Sustainable Conservation And Solutions For Utilities, Inc.*, issued March 20, 2012.

I. INTRODUCTION.

AgPower urges the Commission to completely reject the Proposed Decision. AgPower has submitted comments in this proceeding that repeatedly explain the practical, legal, and policy reasons demonstrating that an auction mechanism, such as the Renewable Auction Mechanism ("RAM") used for larger renewable energy projects would be completely inappropriate for the

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small projects that the SB 32 program is intended for.[1] AgPower has consistently advocated instead for an administratively determined, avoided cost-based first-come-first-served approach consistent with SB 32's emphasis on local environmental realities and other applicable state and federal law. Simply re-labeling and re-packaging an existing auction-based approach is a profound perversion of the intent of the Legislature. Commission of the Proposed Decision would be a fundamentally mistaken public policy decision for reasons that have been brought to the Commission's attention by many parties over many months to no avail.

II. THE COMMISSION SHOULD REJECT ANY FORM OF AUCTION-BASED APPROACH TO FIT PRICING.

The RAM-like approach may have been an appropriate mechanism for some RPS projects, it simply does not comply with the requirements SB 32 for a feed in Tariff ("FiT"). Public Utilities Code Section 399.20, as amended requires a true *administratively determined* FiT offered on a first-come-first-served basis. If the Commission approves the Proposed Decision, it would utterly defeat the purpose of SB 32. The Commission is on record in declaring that RAM fundamentally differs from a FIT since it 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.[2]

AgPower submits that the following is a prime example of the tortured logic employed in the Proposed Decision that that should be rejected by the Commission:

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[1] *See, 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*, filed July 21, 2011; *Reply 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*, filed August 26, 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*, issued November 2, 2011; and *Reply 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*, issued November 14, 2011.

[2] *See, Decision Adopting the Renewable Auction Mechanism*, D.10-12-048, issued December 16, 2010.

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> "Re-MAT is consistent with the requirement that electric corporations make FiT tariffs available on a 'first-come-first-served basis.' The 'first-come-first served' requirement is set forth in § 399.20(f). In accordance with the rules of statutory construction, this provision must be read in manner consistent with all other provisions of the statute. This provision cannot be applied to the § 399.20 FiT Program in isolation. For example, it is an untenable reading of that statute that contracts be accepted by electrical corporations on a first-come-first-served basis without regard to price. Price is a key component of the statute and, only after generators enter into contracts under the adopted pricing mechanism and any other statutory prerequisites, would the first-come-first-served provision apply." (p. 54).

The foregoing can be read as nothing more or less than a painfully obvious effort to justify avoiding the clear intent of the Legislature to arrive at an interpretation that is the opposite of the plain language of SB 32.

III. THE COMMISSION SHOULD REJECT ANY ATTEMPT TO AVOID ITS RESPONSIBILITY TO DO THE WORK REQUIRED TO ACCOUNT FOR ENVIRONMENTAL COMPLIANCE COSTS.

The RAM-based Proposed Decision makes no attempt at all to address SB 32's Public Utilities Code Section 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."

AgPower submits that the following statement in the Proposed Decision represents an abject confession of failure to follow the plain language of SB 32 by dismissively attempting to transfer its essential purpose to parties:

> "However, no party presented evidence that their proposals addressed specific 'environmental compliance costs.' Rather parties presented evidence on the general environmental societal values associated with their particular generation and incorrectly characterized this provision as addressing current

> and anticipated environmental costs. The parties' proposals, therefore, are not supported by the plain language of the statute." (p. 34).

AgPower has in fact, along with other parties provided abundant 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. Whether the quantum of evidence provided by parties or the vast amount of information available to anyone in the public domain has *nothing* to do with the plain meaning of SB 32.

IV. CONCLUSION.

AgPower appreciates the opportunity to submit these comments for consideration by the Commission.

Respectfully submitted,

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DOUGLASS & LIDDELL

Counsel for
AGPOWER GROUP, LLC

April 9, 2012

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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 Comments of AgPower Group, LLC to Proposed Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1x and Denying Petitions for Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc., 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 April 9, 2012, at San Diego, California.

Donald C. Liddell
DOUGLASS & LIDDELL

Counsel for
AGPOWER GROUP, LLC