

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Continue Implementation and
Administration of California Renewables
Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**REPLY COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE
ORDER INSTITUTING RULEMAKING REGARDING IMPLEMENTATION
AND ADMINISTRATION OF THE RENEWABLES PORTFOLIO STANDARD
PROGRAM**

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Dated: June 9, 2011

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I. INTRODUCTION

Pursuant to the May 10, 2011 *Order Instituting Rulemaking Regarding Implementation and Administration of the Renewables Portfolio Standard Program* (“OIR”), the Union of Concerned Scientists (“UCS”) respectfully submits these reply comments on the OIR, which will continue the implementation and administration of the California Renewables Portfolio Standard (“RPS”) program.

II. IMPLEMENTING PUBLIC UTILITIES CODE SECTION 399.20 SHOULD BE AN INITIAL PRIORITY

UCS disagrees with several of the parties that submitted comments together as the “Joint Parties” who classified the implementation of Section 399.20 of the Public Utilities Code, as amended by SB 32, a “Tier 3” issue.¹ SB 32 became a law in 2009 and although the Commission has solicited briefs on the issue, full implementation has not yet occurred. UCS believes that implementing SB 32 should be a high priority for the Commission and therefore agrees with similar comments made by the Center for Energy Efficiency and Renewable Technologies (“CEERT”), Sierra Club California, Solar Alliance, Clean Coalition, Sustainable Conservation, and the California Wastewater Climate Change Group. The Solar Alliance’s

¹ “Joint Parties” at Attachment A, p.4. IEP and NextEra were signatories to the “Joint Parties” comments but did not classify this issue as a “Tier 3” issue.

initial comments urge the Commission to issue a decision on implementing SB 32 based on the briefs submitted in R.08-08-009.² UCS does not disagree with this position, but if the Commission decides that more information is needed in order to make a decision, UCS urges the Commission to address this issue on a parallel track to the other high priorities identified for overall RPS implementation.³

III. COST CONTAINMENT SHOULD NOT BE AN INITIAL PRIORITY

While UCS believes that developing a thoughtful, realistic and trackable cost containment mechanism is extremely important to the overall success of the RPS program, addressing this issue should not be the Commission's highest priority, as the Large-Scale Solar Association ("LSA"), the Division of Ratepayer Advocates ("DRA"), and the California Large Energy Consumers Association ("CLECA") advocate in their initial comments.⁴ UCS suggests that cost containment issues be resolved in the next twelve to sixteen months.⁵ However, UCS agrees with DRA that the Commission include the development of a methodology to assess the utilities status with respect to the cost limitation in its implementation of the cost containment mechanism.⁶

IV. IMPLEMENTATION OF NEW RPS ENFORCEMENT RULES SHOULD NOT BE REDUCED TO REQUESTING AND RECEIVING A COMPLIANCE WAIVER.

² Solar Alliance at 3-4.

³ UCS at 3-4.

⁴ LSA at 1; DRA at 2-3; CLECA at 1-2

⁵ UCS at 4.

⁶ DRA at 3.

UCS strongly disagrees with comments made by Pacific Gas and Electric Company (“PG&E”) and Southern California Edison Company (“SCE”) on how the Commission should approach RPS enforcement issues, which is listed as Topic 6 in the Commission’s OIR. PG&E states: “The Commission should more clearly define what it means by ‘rules for implementing’ the enforcement regime. PG&E submits that this issue should relate only to the process for seeking, granting, and implementing a waiver.”⁷ SCE states: “Issues such as how to implement...’the new RPS enforcement regime,’ do not need program level assessments and should not be included in timetables for RPS implementation.”⁸ In addition, both SCE and San Diego Gas and Electric Company (“SDG&E”) classify these topics as “No advanced implementation necessary” as part of the “Joint Parties” comments.⁹

The Commission’s efforts to implement the new language in Section 399.15(b)(5) of the Public Utilities Code should not be reduced to creating a RPS compliance waiver process. Although Section 399.15(b)(5) provides the conditions that must exist in order for the Commission to waive a retail seller’s RPS compliance obligation, there are terms that require additional interpretation. UCS believes that these terms should not simply be left for a retail seller to interpret, or only considered once an RPS waiver has been requested. For example, if a retail seller were to request an RPS compliance waiver because of inadequate transmission capacity, the Commission would first be required to consider whether the retail seller has “...taken *all reasonable operational measures* to maximize cost-effective deliveries of electricity from eligible renewable energy resources in advance of transmission availability [emphasis added].”¹⁰ If a retail seller were to request an RPS compliance waiver because of project delays,

⁷ PG&E at 4;

⁸ SCE at 10.

⁹ “Joint Parties” at 2 of Attachment A.

¹⁰ Pub. Util. Code § 399.15(b)(5)(A)(ii)

the Commission would be required to consider whether the retail seller took “...*reasonable measures, under the control of the retail seller*, to procure cost-effective distributed generation and allowable unbundled renewable energy credits [emphasis added].”¹¹ While it’s likely not appropriate or necessary for the Commission to fully define each term used in Section 399.15(b)(5) of the Public Utilities Code in this proceeding, UCS believes the Commission should provide the retail sellers with guidance on the strategies and actions related to energy procurement and transmission planning that the Commission will be looking for as it assesses whether a retail seller has taken reasonable measures to comply with its RPS obligations despite a deficit. If RPS compliance progress is not measured and evaluated throughout the years, the Commission will have little objective information to use when it determines whether an RPS waiver is appropriate.

V. THE COMMISSION SHOULD NOT RELY UPON THE CEC’S EXISTING DEFINITION OF “FIRMED AND SHAPED”

UCS’s initial comments emphasize the need to clarify the types of eligible renewable energy resources that will fall into each portfolio content category created by Section 399.16(b) of the Public Utilities Code.¹² Several parties, including the “Joint Parties,” CEERT, and the Western Power Trading Forum (“WPTF”) agree that defining these products should be an initial priority for the Commission.¹³ However, both Shell Energy and WPTF take the issue a step further that is inappropriate and contrary to the intent of SBX1 2. Specifically, UCS disagrees with WPTF that “The Commission needs to defer to the California Energy Commission (“CEC”) to determine the definitions of ‘firmed and shaped’...WPTF notes that “firmed and shaped” has

¹¹ *Id.* at § 399.15(b)(5)(B)(iv)

¹² UCS at 1-2.

¹³ “Joint Parties” at 1 of Attachment A; CEERT at 6; WPTF at 5.

already been defined by the CEC, so there is no need for the Commission to further define it.”¹⁴ Shell makes a similar comment: “The CEC should be responsible, therefore, for determining the definition of ‘firmed and shaped’ eligible renewable energy resources that provide ‘incremental’ electricity (under Section 399.16(b)(2)). In this connection, the Commission should accept the CEC’s existing definition of an eligible ‘firmed and shaped’ RPS product as set forth in the CEC’s ‘Guidebook’ on RPS eligibility.”¹⁵ SBX1 2 amended Section 25741 of the Public Resources Code to, among other things, remove the definitions of “delivered” and “delivery” which the CEC Guidebook had further interpreted. This was an intentional change and it would be inappropriate for the Commission and the CEC to simply assume those terms should not be interpreted differently as a result of SBX1 2.

VI. CONCLUSION

UCS appreciates this opportunity to respond to party comments on the OIR.

Respectfully submitted,



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¹⁴ WPTF at 5-6.

¹⁵ Shell at 7.

CERTIFICATE OF SERVICE

I, Miriam Swaffer, certify that on this date, I have caused the foregoing REPLY COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE ORDER INSTITUTING RULEMAKING REGARDING IMPLEMENTATION AND ADMINISTRATION OF THE RENEWABLES PORTFOLIO STANDARD PROGRAM to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. mail on the parties listed on the service lists for the proceeding in California Public Utilities Commission Docket No. R.11-05-005

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on June 9, 2011 in Berkeley, California.



Miriam Swaffer