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)

THE DIVISION OF RATEPAYER ADVOCATES' COMMENTS ON PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) respectfully submits these Comments pursuant to the July 15, 2011 Administrative Law Judge (ALJ) Ruling[1] requesting party comments on three aspects of California's renewables portfolio standard (RPS) changed by recently enacted Senate Bill (SB) 2 (1x):

1. Setting new RPS procurement requirements pursuant to new § 399.15(b), particularly the compliance obligations of RPS-obligated retail sellers for the period 2011-2013, the first compliance period in the new 33% RPS regime.
2. Changing the compliance obligations of RPS-obligated retails sellers through 2010.
3. Developing basic RPS compliance accounting for 2011 and later years, including "banking" rules and minimum quantity of long-term contracts.

The July 15, 2011 ALJ Ruling sets forth 19 questions related to these three areas of change. DRA's responses to those questions are set forth below.

II. DISCUSSION

1. Should the transition from the current RPS program (20% of retail sales from RPS-eligible generation by the end of 2010)(20% program) to the RPS program as revised by SB 2 (1x) (33% of retail sales from RPS-eligible generation by the end of 2020) (33% program) start from the position that the procurement and flexible compliance rules for the 20% program apply through the 2010 compliance year and the procurement and compliance rules for the 33% program apply beginning with the 2011 compliance year (making allowance for the special provision in new Section 399.15(a)?) Please provide detailed support for your position.

The procurement and compliance rules for the 33% RPS program should begin in 2011, the first year of the first compliance period in the 33% RPS program. Although SB 2 (1x) will not become effective until 90 days after the end of the special session, it was introduced in February 2011 and chaptered April 12, 2011. The language of SB 2 (1x) reflects the legislature's intent that it become effective in 2011 by establishing in Section 399.15(b)(1) an initial compliance period that begins January 1, 2011.[2] Implementation of the procurement and

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[1] *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets And Certain Compliance Requirements for the Renewables Portfolio Standard Program*, July 12, 2011 (July 12, 2011 Ruling or Ruling), p. 3.

[2] *See e.g., Myers v. Philip Morris Companies, Inc.*, (2002) 28 Cal.4th 828, 844 ("[A] statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."

compliance rules at the start of the first compliance period will be administratively more efficient and consistent with the intent of the legislation to start the 33% RPS program requirements in 2011 to the extent feasible. Although DRA supports phasing in portfolio content categories at the beginning of 2012,[3] procurement and flexible compliance rules of the 33% RPS program should begin on January 1, 2011, consistent with the initial compliance period that begins on that date.

2. New § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them.

A. Should compliance targets for intervening years in the 2011-2013 compliance period be set as:

-- 20% of retail sales for the year ending December 31, 2011;

-- 20% of retail sales for the year ending December 31, 2012;

-- 20% of retail sales for the year ending December 31, 2013,

such that the RPS obligation (compliance period quantity) of a retail seller for the 2011-2013 compliance period would equal in megawatt-hours (MWh): (.20 x 2011 retail sales) + (.20 x 2012 retail sales) + (.20 x 2013 retail sales)?

- *Should different compliance targets for intervening years be set for this period? Why or why not?*
- *Should no compliance targets for intervening years be set for this period? Why or why not?*

The legislation sets the test for the compliance period from 2011 to 2013 differently from subsequent compliance periods by requiring procurement for the entire three year period to equal an average of 20 %of retail sales. In order to assess average retail sales across three years, retail sellers including the utilities will by necessity need to track and record each year's compliance so that they can demonstrate they have achieved the average of 20% sales across the compliance period. The Commission should therefore establish 20% compliance targets for the years ending December 31, 2011, December 31, 2012, and December 31, 2013, because those targets are consistent with the average required for the entire period, and will help guide the utilities to meeting the 2011-2013 targets.

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[3] The Division of Ratepayer Advocates' Reply Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 19, 2011, p. 8.

B.

- *Should targets for intervening years in the 2014-2016 compliance period be set using a linear trend:*

  -- 21.5% of retail sales by December 31, 2014;

  -- 23.5% of retail sales by December 31, 2015; ending with

  -- 25% of retail sales by December 31, 2016, such that the compliance period quantity for the 2014-2016 compliance period would equal in MWh: (.215 x 2014 retail sales) + (.235 x 2015 retail sales) + (.25 x 2016 retail sales)?

- *Should targets for intervening years in the 2017-2020 be set using a linear trend:*

  -- 27% of retail sales by December 31, 2017;

  -- 29% of retail sales by December 31, 2018;

  -- 31% of retail sales by December 31, 2019; ending with

  -- 33% of retail sales by December 31, 2020, and thereafter, such that the compliance period quantity for the 2017-2020 compliance period would equal in MWh: (.27 x 2017 retail sales) + (.29 x 2018 retail sales) + (.31 x 2019 retail sales) + (.33 x 2020 retail sales)?

- *Should different targets for intervening years be set for either of these compliance periods? Why or why not?*

In contrast to the initial compliance period, which *sets the target as an average of 20% of retail sales for 2011 through 2013*, the legislation categorically identifies explicit targets for 2016 and 2020. Specifically, the utilities and other retail sellers are required to achieve 25% of retail sales by December 2016 and 33% by December 2020. These milestones are identified in the legislation in Section 399.15(b)(1)(B):

> "For the following compliance periods, the quantities …shall …. ensure….procurement…from…eligible…resources (that) achieves 25% of retail sales by 2016 and 33% of retail sales by 2020."

The Commission should enforce the strict targets identified in Section 399.15(b)(1)(B). Failure to enforce the requirement that the utilities "achieve 25% of retail sales by 2016" would mean that there is no subsequent, enforcement opportunity until 2020. This lack of enforcement opportunity would present a much higher risk of retail sellers failing to reach the strict targets identified in Section 399.15(b)(1)(B).

The Commission is required to arbitrate the tension in the legislation between 399.15(b)(1) "procure a minimum quantity of eligible renewable energy for each of the compliance periods" and Section 399.15(b)(2)(B) "quantities shall reflect reasonable progress in

each intervening year." While the Commission cannot enforce targets in the intervening years, such targets are necessary to demonstrate reasonable progress toward meeting the ultimate goal as well as to calculate the quantity of retail sales (in MWhs) required to meet the total required for the entire compliance period. From the ratepayer perspective, the optimal solution is to minimize the ratepayers' exposure to renewable costs over the compliance period. This approach would suggest lower intermediate targets for the first two years of a compliance period and an aggressive 'push' to achieve the target in the final year. Such an approach produces yearly targets that are less linear and more concave. An example of a solution is given in Table 1, which gives a 'concaved' set of intermediate targets between compliance years.

Table 1

Possible solution that demonstrates reasonable progress to compliance targets

Year		2011	2012	**2013**	2014	2015	**2016**	2017	2018	2019	**2020**	2021
ALJ 'linear approach'	**(% retails sales)**	20	20	**20**	21.5	23.5	**25**	27	29	31	**33**	33
DRA 'Concaved approach'	**(% retails sales)**	20	20	**20**	21	22.5	**25**	26	28	30.25	**33**	33

C. *New section 399.15(b)(2)(C) provides that "[r]etail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."*

What are the consequences, if any, of a retail seller attaining the target in the final year of the compliance period (e.g., 25% of retail sales in 2016), but failing to procure "the quantities associated with all intervening years" by the end of that compliance period?

Section 333.15(b)(2)(C) makes it clear that retail sellers face no immediate consequences for failure to attain the intermediate years' goals for renewable electrical sales. However, failure to procure "the quantities associated with all intervening years" by the end of that compliance period would indicate that the retail seller has failed to demonstrate the expected "reasonable progress in each intervening year" required by Section 399.15(b)(2)(B). Failure to achieve the total MWh required by 2013 and 2010 may result in a penalty or other appropriate action by the Commission based on the MWh shortfall.

3. New section 399.15(a) provides that "[f]or any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article."

A. How should "at least 14 percent of retail sales from eligible renewable energy resources in 2010" be interpreted?

1. At least 14 percent of retail sales must come from renewable energy credits (RECs), from bundled or REC-only contracts, associated with RPS-eligible energy that was generated and delivered in 2010. or

2. The 14 % figure may include the allowable deferral of up to 0.25% of a retail seller's annual procurement target (APT) for 2010 under the flexible compliance rules for the 20% RPS program set out in Decision (D.) 06-10-050. or

3. The 14% figure may include both the allowable deferral of up to 0.25% APT and deferral of further deficits for 2010 through any allowable reason for current noncompliance, e.g. "earmarking," as set out in D. 06-10-050. or

4. The 14% figure may include either the deferral of up to 0.25% of APT for 2010 or deferral of further deficits through any allowable reason for current noncompliance, e.g., earmarking, but not both. or

5. The 14% figure should be calculated in some other way. Please provide detailed support for the proposed calculation.

The Commission should interpret "at least 14 percent of retail sales from eligible renewable energy resources in 2010" as meaning that at least 14% of retail sales must come from renewable energy credits (RECs) – either bundled or REC-only contracts – associated with RPS-eligible energy that was generated and delivered in 2010. Requiring the retail seller to qualify for excusal of its deficit in meeting the 20% RPS by the end of 2010 without using the flexible compliance mechanisms available for retail sellers who achieved the 20% RPS requirement is a reasonable trade off for forgiving the deficits in meeting the 20% RPS. This interpretation of new Section 399.15(a) will provide a floor from which a retail seller can then start from anew to meet the 20% by 2013 requirement. Under this rule, retail sellers will have the opportunity to make a clean transition, as long as they meet the 14% target, from the 20% RPS program to the 33% RPS program.

B. How should "the deficits associated with any previous renewables portfolio standard" be interpreted? Please provide detailed support for the proposal.

1. *As applying only to deficits in meeting the 2010 target of 20% of retail sales, without the use of flexible compliance; or*
2. *As applying only to the 2010 target of 20% of retail sales, using allowable flexible compliance rules in the calculation of any deficit. or*
3. *As applying to any year in which a retail seller has an APT obligation, using allowable flexible compliance rules in the calculation of any deficit. or*
4. *Another interpretation should be used.*

DRA interprets the new Section 399.15(a) statutory language "deficits associated with any previous renewables portfolio standard" as applying to "any" year in which a retail seller has an APT obligation, using allowable flexible compliance rules, in order to meet the 20% target by 2010. DRA interprets "any previous renewables portfolio standard" to mean all RPS rules that exist prior to the changes made in SB2 (1x) should still be effective up to December 31, 2010. Such a rule will allow for a clean break from the 20% RPS program to the 33% RPS program.

C. How should "shall not be added to any procurement requirement pursuant to this article" be interpreted with respect to RPS procurement obligations under the 20% program?

- *Does a retail seller need to satisfy its APT requirements for all compliance years through 2010, using the current flexible compliance rules, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources (defined as you proposed in 3.A, above) in 2010? .*
- *Is a retail seller subject to penalties for failing to satisfy its APT requirements for any compliance year(s) through 2010, in accordance with D.03-06-071, D.03-12-065, and D.06-10-050, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources (defined as you proposed in 3.A, above) in 2010?*

Section 399.15(a) states that those retail sellers who do not meet the 20% requirement by 2010 of the 20% RPS program, will be allowed to wipe their slate clean and move on to the new 33% by 2020 RPS regime as long as 14% of retail sales in 2010 is from renewable energy resources generated and delivered in 2010. This appears to reflect the intent of SB 2 (1x) to allow retail sellers who meet that threshold to move forward without otherwise existing deficits, and without incurring penalties.

4. Should new § 399.15(b)(9) be interpreted to mean: "[d]eficits associated with

the compliance period in which the deficits occur shall not be added to a future compliance period?" Should this section apply only to compliance year 2011 and future years? Why or why not?

Yes. The Commission should follow the plain language of the statute and, from 2011 onwards, not include deficits associated with one compliance period in the calculation of the RPS-required procurement for the subsequent compliance period. Including shortfalls from a prior compliance period in the required procurement for a subsequent period would necessitate even higher procurement in the subsequent period. Higher procurement in subsequent compliance periods will increase cost through both actual procurement costs, as well as an increase in price due to higher demand for renewables. However, DRA is also concerned that continuous failure to achieve renewables targets could result in much higher demand in subsequent periods and, if left unchecked, could result in a situation where a retail seller may have to purchase all of its procurement targets in the final year of the program. Such a high procurement requirement in the final year of the program could result in a bubble that would considerably increase the price of renewables procurement, as occurred in the exorbitant price increase in renewables energy procured during the end of the 20% RPS by 2010 program. Therefore, the Commission should consider other remedies to encourage compliance, including increased reporting requirements for utilities who fail to meet their compliance targets.

5. If a retail seller has deficits from any compliance year through 2010 that must be satisfied with procurement in 2011 and/or later years, how should the requirement to satisfy the prior deficits be implemented, in light of new § 399.15(b)(9)?

The new legislation provides the retail sellers a new start on RPS program compliance. This includes the forgivness of deficits as well as the removal of the earmarking mechanism. Subsequently, it is more consistent with the intent of the legislation – as well as administratively simpler – to move forward as if no generation in years 2011 or later has been earmarked. The Commission should consider appropriate penalties for utilities who do not meet the minimum 14% threshold required for forgiveness of prior deficits, but should not carry those deficits forward into the new program.

6.

- *Should the minimum quantity include specific minimum quantities of procurement from long-term contracts in any or all of the portfolio content categories identified in new § 399.16(b)?*

- *Should the minimum quantity requirement under new § 399.13(b) carry forward the requirement in D.07-05-028 that the long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts sought to be counted for RPS compliance? If not, what basis for accounting for the minimum quantity of long-term contracts should be used?*
- *Should the minimum quantity requirement under new § 399.13(b) have a termination? If so, what should the termination be?*
- *How should deliveries in 2011 and later years from short-term contracts entered into in 2010 and earlier years, and in compliance with D.07-05-028, be treated?*
- *Should such deliveries be deducted from actual procurement quantities as part of the calculation of excess procurement that may be applied to a subsequent compliance period pursuant to new § 399.13(a)(4)(B)?*
- *Should short-term contracts entered into in 2011 but prior to the effective date of SB 2 (1x) be treated differently? Why or why not?*

DRA supports as much similarity between the 20% RPS program and the 33% RPS program as possible in order to minimize administrative costs and promote regulatory certainty. Under the 20% RPS program, the utilities were required to execute contracts for around 1% of retail sales annually, and at least 0.25% of previous year's retail sales had to be contracted for from long-term new facilities. Therefore, at least one-quarter of executed contracts in a given year were expected to be long-term.

In the 33% RPS program, DRA proposes that one-quarter of each compliance period's executed contracts be long-term. Since the new facility requirement has been stricken, only the long-term contracting requirement must be met. This proposal is as consistent with previous rules as possible given the new model of multi-year compliance periods. The logical termination for this minimum long-term requirement is 2020, the expiration of the 33% RPS program. Although the legislation states that the 33% standard applies annually in perpetuity after 2020, absent a new law, compliance periods will no longer exist after 2020.

Deliveries in 2011 and subsequent years from short-term contracts signed before June 1, 2010 should be grandfathered in the same way other contracts are grandfathered. In short, they should not be restricted now. The advantage of DRA's proposal is that it does not consider short- and long-term contract *deliveries* in any particular year – which would trigger the question of grandfathering here. DRA's proposal relies on contract *execution* which does not fall under the grandfathering provision.

The language of the legislation in Section 399.13(a)(4)(B) is clear that short-term contracts (which are not grandfathered) cannot be counted toward excess procurement. The generation from short-term contracts, insofar as it is in excess of procurement targets, cannot be used in the next compliance period. Finally, short-term contracts entered into in 2011 should be treated as if they are already under the 33% RPS program.

7.

- *Please propose a method of calculating any excess procurement that may be carried over from the 2011-2013 compliance period to the 2014-2016 compliance period. Please provide a sample calculation.*
- *Should the method you propose also be used for calculating any excess procurement that may be* carried over *from the 2014-2016 compliance period to the 2017-2020 compliance period? If not, please propose another method. Please provide a sample calculation for your method.*
- *Please discuss the relationship of the method(s) you propose to your response to #2, above, relating to the calculation of RPS procurement obligations for compliance year 2011 and future years pursuant to new § 399.15(b).*

DRA believes that generation associated with short-term contracts must be subtracted from actual procurement quantities. In addition, generation associated with Bucket 3 products cannot be counted as excess procurement. However, DRA reads the statute to mean that generation associated with Bucket 3 products *can* be used toward compliance in a compliance period. Then, Bucket 1 and 2 generation can be used toward compliance and, finally, any remainder may be banked for the next period. DRA presumes this method for calculating excess procurement can be used for all of the compliance periods.

8. Current RPS rules set out a system of procurement banking different from that in new § 399.13(a)(4)(B).

- *Should the Commission allow unlimited forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for all compliance periods?*

Should the Commission allow no banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for any compliance period later than 2010?

- *Should the Commission allow forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts through the 2011-2013 compliance period but not beyond 2013?*
- *Should the Commission make some other provision for banking of excess procurement prior to January 1, 2011 from bundled and/or REC only contracts?*

If a retail seller has excess procurement from prior to January, 1 2011, and such excess procurement satisfies the conditions and limits set out in Section 399.16, then banking of excess compliance products should be allowed and carried forward, as long as such excess procurement is banked and retired within the compliance period it is received consistent with the requirements of Section 399.15(b)(9). To do otherwise would penalize utilities that successfully complied with the 20% RPS program and impose greater costs on their ratepayers.

- *Should any banked procurement be counted in years after 2010 only in accordance with the limits on the use of specific portfolio content categories set out in new § 399.16(c)?*

Yes, to do otherwise would be counter to the language of the legislation.

9. If a retail seller did not procure at least 14% of retail sales from RPS-eligible resources in 2010, should its deficit for 2010 be calculated as a shortfall from 20% of retail sales in 2010 or from 14% of retail sales in 2010?

In order to promote regulatory certainty, DRA believes a retail seller should calculate its shortfall from 20% of retail sales in 2010. Such treatment will also promote equity with other retail sellers who have complied with the 20% by 2010 RPS rules.

DRA's understanding is that the "waiver" from early deficits is a special one applied toward entities that demonstrated effort that the legislature determined adequate to comply with the earlier 20% RPS. If an entity did not achieve the 14% threshold that the legislature determined as demonstrating adequate effort towards meeting the 20% RPS, it is still fully obligated under the RPS % program that required achievement of 20% of retail sales in 2010.

10. Should the Commission continue to apply the current flexible compliance rules to RPS procurement for 2010 and prior compliance years?

Yes, DRA supports prospective application of the new rules. The provision waiving previous deficits – Section 399.15(a) — applies to the 33% RPS program that begins in 2011. Therefore, compliance determinations for years 2010 and prior should be made under the old rules.

11. Since SB 2 (1x) will not become effective until, at the earliest, the last quarter of 2011, should the current flexible compliance rules apply to RPS procurement for 2011?

SB 2 (1x) was enacted on April 12, 2011 and includes clear compliance requirements for the year 2011, including the establishment of three-year compliance periods beginning in 2011. Therefore, DRA recommends that the Commission establish a clear separation between

the requirements of the 20% RPS program and the 33% RPS program, and that it implement new requirements beginning in 2011.

If old banking and earmarking rules were applied, for example, for 2011 but then new rules for banking (and the elimination of earmarking) started in 2012, RPS accounting would be complicated by different banking requirements within the same compliance period. A utility would have 2011 MWhs banked under the old rules -- which permitted banking of short-term and unbundled MWhs -- but other MWhs banked in 2012 and later. Under this scenario, the 2012 vintage would be subject to new banking restrictions including a lack of ability to count as excess procurement if the MWh was associated with a short-term contract. As a result, the utilities and other retail sellers would essentially need a Bank 1 and Bank 2 for the generation banked under the two different systems, both of which would be in effect for the subsequent years until those RECs were retired.

In short, the overwhelming administrative complexity of implementing the new RPS program only partially in 2011 would overly complicate compliance. DRA therefore recommends that the new flexible compliance rules be implemented starting in 2011.

12. In the current RPS flexible compliance regime, a retail seller is allowed to defer a shortfall of up to 0.25% of APT without explanation, so long as the deficit is made up within three years. Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- *For years after 2010, should the Commission eliminate its current rule allowing deferral of 0.25% of APT without explanation, so long as the deficit is made up within three years?*

Yes. The Commission should follow the plain language of the statute and eliminate its current deferral rules for years after 2010.

13. In the current RPS flexible compliance regime, a retail seller is allowed to defer a deficit in excess of 0.25% of APT by the use of any allowable reason for noncompliance (e.g., "earmarking.") Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- *For years after 2010, should the Commission eliminate its current rule allowing deferral of deficits in excess of 0.25% of APT through earmarking?*

Yes, under Section 399.15(b)(9) the legislation states that "Deficits …shall not be added to future compliance periods." Consequently the Commission is required to eliminate this rule.

- *How should the Commission treat RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013?*

Previously earmarked RECs should be usable for current compliance or sold to recoup some value for the ratepayer.

- *Should the RECs be allocated to the portfolio content categories (and their respective limits) of new § 399.16?*

Yes, all RECs are category 3 products as defined in Section 399.16(b)(3) and should be treated as such irrespective of origin.

- *Should the RECs be allocated to the procurement categories that applied in the year in which the contract was signed?*

Such categories are no longer applicable under the 33% RPS program, and it would therefore be incorrect to apply old categories to current compliance requirements.

- *How would these categories connect to the portfolio content categories of new § 399.16?*

Please address the application of new § 399.16(d) to your proposals.

DRA has no comments at this time but reserves the right to address these issues in reply comments.

14. Should retail sellers be required to apply the RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013 to any deficits in meeting APT in years prior to 2011, regardless of whether the retail seller attained at least 14 percent of retail sales from eligible renewable energy resources in 2010 (new § 399.15(a))? Why or why not?

Pursuant to Section 399.15(a) deficits are waived (for retail sellers that meet the 14% threshold), and earmarking is no longer a part of the 33% RPS program. Therefore, retail sellers who meet the 14% threshold may use the RECs generated in 2011 or later even if those RECs were previously earmarked.

15.

- *What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(a)?*
- *What documentation should the Commission require from ESPs? From CCAs?*
- *What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(b)?*
- *What documentation should the Commission require from ESPs? From CCAs?*

- *In view of the CEC's oversight of POUs' compliance with RPS requirements under SB 2 (1x), how should this Commission coordinate with the CEC to administer and verify your proposed system of documentation?*

The standard of documentation should be universal irrespective of the load serving entities that undertakes the transaction in question. The roles of different agencies and the documentation that establish the validity of renewable energy generation or renewable energy product is already provided through the California Energy Commission CEC verification process and via WREGIS.

16.

- *To what obligation should a penalty apply?*

  -- the goal at the end of each compliance period (i.e., average of 20% for 2011-2013; 25% by the end of 2016; 33% by the end of 2020);
  -- the compliance period quantity for a particular compliance period;
  -- both of the above;
  -- another metric or quantity. Please set out the proposal in detail and explain its basis.

- *Should the penalty amount of $0.05/kWh be changed? If so, what method should be used to set a new penalty amount?*
- *For compliance periods beginning in 2011, should a penalty cap be in place?*
- *If a penalty cap is imposed, should it cover an entire compliance period?*
- *What method should be used to set a new penalty cap under SB 2 (1x)?*

Although compliance cannot be required to be demonstrated in "any individual intervening year," there are three years in which compliance must be demonstrated: 2013, 2016 and 2020. Penalties and other appropriate remedies should be considered for failure to meet the goal at the end of each compliance period, as well as for failure to meet the compliance period quantity for each compliance period.

The Commission should retain the currently existing penalty amount of $0.05/kWh and the cap of $25 million per year,[4] which should apply to each compliance period separately.

17. Please identify how the Commission would verify compliance with any proposal you have made, above. Please provide specific mechanisms and examples.

It is DRA's understanding that tracking and verifying actual RPS generation will still be the job of the CEC and that the CEC will track and verify RPS generation using its RPS

[4] See D.03-12-065, pp. 8-20; D.03-06-071, pp. 51-53.

Procurement Verification Reports. The CPUC can use the RPS Procurement Verification Reports for purposes of assessing compliance.

18. Please discuss any issues related to the verification by the CEC of any elements of any proposal you have made, above. Please include discussion of the use of the Western Renewable Energy Generation Information System (WREGIS). Please provide specific mechanisms and examples.

See response to Question 15.

19. The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid-October 2011, at the earliest. In light of this, please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?

DRA expects that retail sellers have been procuring in light of SB 2 (1x) since at least the beginning of 2011, and therefore believes that to the extent feasible, the 33% RPS rules should begin applying in 2011.

III. CONCLUSION

For the reasons discussed above, the Commission should adopt DRA's recommendations contained herein.

Respectfully submitted,

/s/ DIANA L. LEE

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VERIFICATION

I, Diana L. Lee, am an attorney for the Division of Ratepayer Advocates which is a party herein, and am authorized to make this verification on DRA's behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing are true and correct.

Executed on August 30, 2011 at San Francisco, California.

/s/ DIANA L. LEE

Diana L. Lee
Staff Counsel