BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program	**R. 11-05-005** (Filed May 5, 2011)

COMMENTS OF SIERRA CLUB CALIFORNIA ON THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLAINCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

August 30, 2011

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I. INTRODUCTION

Sierra Club California respectfully submits the following Comments in accordance with the July 15, 2011 Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program ("Ruling").

Sierra Club California is comprised of more than 150,000 members and ratepayers throughout California. Sierra Club California supports strict enforcement of the requirements of the renewables portfolio standard (RPS) program to ensure that the objectives of the program are achieved. While Sierra Club California offers these comments focused on a subset of issues presented in the Ruling, most particularly reasonable progress and penalties, we reserve an interest in appending our position in reply comments.

1. Yes, 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) should 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.
2. The new § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them.

A. Sierra Club supports the proposed compliance targets for each year as stated in the Ruling. It is reasonable progress to achieve at least the 2010 RPS goal of 20 percent during the first compliance period, although we would welcome more accelerated compliance. It is important to set compliance targets for intervening years so that there is consistently a benchmark for reasonable progress.

B. For the compliance period 2014-2016 and 2017-2020, the Commission is required to set compliance period quantities that "reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products form eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2015, and 33 percent of retail sales by December 31, 2020." Sierra Club California agrees with the straw proposal in the ruling to set targets for intervening years in both the 2014-2016 and 2017-2020 compliance periods using a linear trend. The statute requires reasonable progress, and the increased obligations are not proposed to begin increasing until 2014. Given the historical shortfall of renewables procurement and failure of utilities to meet the prior RPS, a linear trend is a fair and logical pattern to follow.

C. The new section 399.15(b)(2)(C) limits Commission enforcement of a specific quantity of procurement for any individual intervening year. Although this restricts enforcement of the proposed linear trend, the intervening year targets are important and consequential for rules related to banking of early compliance. For that reason, a linear trend is important so that reasonable progress is not misclassified as early compliance subject to banking credits. Although there are not formal penalties for missing an intervening year's target, Sierra Club California urges for the target at

the end of each compliance period to be considered a bright line, subject to strict penalties.

3. No comment.
4. Under the law, it appears that a deficit should not be applied to the next compliance period, but the Commission should consider such a deficit to be an exacerbating circumstance, demonstrating a pattern of noncompliance, and triggering more stringent penalties.
5. No comment.
6. Sierra Club California supports the policy reasoning for the provisions restricting short-term contracts for electricity and associated renewable energy credits. A longer term contract is more likely to represent new development of renewable energy rather than a spot market, and promotes more stable prices and procurement planning. The minimum quantity of 0.25% of the prior year's retail sales appears to be much lower than the 1 percent annual goal of new renewables procurement under the prior RPS program. Sierra Club California recommends increasing the minimum quantity to approach a level closer to 1 percent of the prior year's retail sales that have a minimum duration of 10 years until the compliance target for that intervening year is met.
7. Section 399.13(a)(4)(B) requires the Commission to adopt new rules for the calculation and management of RPS procurement that is in excess of the requirements for a given compliance period ("banking"). As recommended above, Sierra Club supports calculating the requirements in reference to those in intervening years, following a linear growth pattern. This will provide an incentive for accelerated progress if banking credit

accrues only after exceeding a growth pattern assuming reasonable progress toward meeting RPS goals.

8. As of the latest RPS compliance report, there does not appear to be excess procurement by any of the investor-owned utilities, so banking excess procurement should be a moot point, and therefore should not occur.
9. No comment.
10. No comment.
11. Sierra Club California does not object to the current flexible compliance rules applying to RPS procurement for 2011, but urges stronger enforcement when SB 2 1X takes effect.
12. The Commission should eliminate its current rule allowing deferral of 0.25% of APT. Sierra Club California urges a new focus on compliance with the actual RPS targets rather than continue a cycle of missed deadlines and delayed implementation of the RPS.
13. In the interest of a new focus on compliance and progress toward renewables procurement, the Commission should eliminate its current rule allowing deferral of deficits in excess of 0.25% of APT through earmarking.
    a. RECs should be allocated to the appropriate portfolio content categories so that the provisions of the law related to portfolio content categories is consistently applied.
    b. RECs should be allocated to the procurement categories that apply in the year that the electricity was delivered, not in the year that the contract was signed. Contracts for RECs have a high failure rate for actual procurement, and the actual delivery of electricity represents real benefits to the environment and ratepayers,

and represents the purpose of the program, while a mere signing of a contract does not.

14. No comment.

15. The utilities demonstrating compliance to the Commission should require Publicly Owned Utilities (POUs) to offer evidence in their contract documenting the environmental attributes of the electricity credits sold. The role of the California Energy Commission (CEC) should be to track and monitor compliance of the POUs. An important issue is determining how this tracking and monitoring can be done in a timely way to verify qualified transactions. Verification from the Investor Owned Utilities (IOUs) should include verification from the POUs that they are in compliance with the RPS. The documentation should identify the delivery of actual electricity, and follow appropriate standards established by the Commission and CEC.

16. The penalty should apply to both (1) the goal at the end of each compliance period, and (2) the compliance period quantity for a particular compliance period. The goal at the end of each compliance period is specified in the law. The compliance period quantity is also referenced in the law, which states that "each retail seller shall procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods,"[1] and the Commission should enforce this, because the statute also states that "retail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period."[2] Although this section also states that retail sellers are not required to demonstrate the quantity of procurement of any intervening year, a logical way to resolve these two provisions is to

[1] Public Utilities Code § 399.15(b)(1).
[2] Public Utilities Code § 399.15(c).

interpret that the utilities are not required to demonstrate annually, but that at the end of each compliance period the retail sellers must demonstrate compliance with each intervening year, including the goal at the end of each compliance period. The Commission should monitor the actual quantity of retail sales in intervening years and verify the required quantities for each intervening year to ensure transparency in the program.

The penalty amount of $0.05 / kWh should be periodically adjusted for inflation. To the extent that actual experience renders the penalty inadequate to induce compliance, the penalty amount should be increased. A retail seller failing to comply with a target by more than one year after the end of a compliance period should be assessed a significantly higher penalty. There should be no penalty cap. Penalty caps in the past have rendered the financial risk to the utility so minimal that it doesn't impose a serious commercial concern, as the profits for retail sellers are in the hundreds of millions of dollars per year. By including provisions for penalties in the law, the legislature intended for the Commission to enforce the RPS program. The legislature did not include provisions for a penalty cap, and the inclusion of such a cap undermines enforcement of the RPS program.

The Commission should include in the Decision a conclusion of law that the penalty provisions of Public Utilities Code Section 399.13)(e) require the Commission to exercise its authority pursuant to Section 2113 to require compliance, and to "enforce comparable penalties" for other retail sellers that fail to meet the procurement targets. The utilities do not face obligations or penalties until the end of a compliance period, deficits do not carry over between compliance periods, and the RPS law provides the

ability to procure unbundled RECs in quantities that are frontloaded into the early years, understanding that rapid compliance allows RECs as options. In addition, thousands of distributed generation programs will be launched soon, including the RAM and feed-in tariff, in addition to the utility solar program. These programs are oversubscribed, and could be expanded if the utilities are falling behind. In context of the flexibility written into the statute, Sierra Club California urges an upfront statement by the Commission that the RPS will be enforced with penalties.

17. No comment.
18. The Commission should request a schedule or protocol for the CEC to be timely in its tracking of renewable procurement.
19. No comment.

Respectfully submitted,

/s/ Jim Metropulos

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Dated: August 30, 2011

VERIFICATION

I am the Senior Advocate with Sierra Club California and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in this pleading are true.

I declare under penalty of perjury that the matters stated in this pleading are true and correct.

Executed on the **30th day of August, 2011**, at Sacramento, California.

/s/ Jim Metropulos

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