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 CALPINE POWERAMERICA-CA, LLC ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Calpine PowerAmerica-CA, LLC ("CPA")[1] submits the following reply to comments filed August 30, 2011 ("Opening Comments") in response to the *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard ("RPS") Program*. Specifically, CPA opposes the adoption of any rule or policy that would unnecessarily limit the flexibility or options available to retail sellers to satisfy the new RPS procurement obligations set forth in Senate Bill ("SB") 2(1x).

CPA supports the purpose and goals of SB 2(1x) to increase RPS procurement over the next decade. However, to ensure the most fair, efficient and cost-effective implementation of SB 2(1x), it is important that the California Public Utilities Commission ("Commission") recognize the significant steps many retail sellers undertook to comply with the now superseded "20% by 2010" RPS procurement obligation and preserve the value of actions already taken by retail sellers in reliance on current RPS law and rules. This includes adoption of transitional rules that

[1] CPA is an Energy Service Provider subject to the Commission's RPS compliance obligations and is a subsidiary of Calpine Corporation ("Calpine"). Calpine is a party in this proceeding and CPA is a named respondent.

permit the use of previously banked procurement to satisfy RPS compliance obligations going forward.

In addition, minimum quantity and long term contracting requirements must be administered in a way that encourages long-term contracting but also reflects changes to the RPS program under SB 2(1x) that provide retail sellers with greater flexibility in satisfying RPS compliance obligations. Procurement targets for the intervening years in each compliance period should also be set in a manner that provides retail sellers with sufficient flexibility to meet compliance obligations in an efficient and cost effective way.

An important aspect of SB 2(1x) is that while it sets specific identifiable RPS procurement obligations for three compliance periods, it also provides retail sellers with flexibility and options for satisfying these procurement obligations. As the Commission moves forward to implement SB 2(1x), it is critical that the rules and policies adopted in this proceeding respect and maintain this flexibility.

I. The Implementation of SB 2(1x) Must Preserve the Value of Procurement and Compliance Actions Already Undertaken by Retail Sellers

Several parties believe that *all aspects* of SB 2(1x) should apply retroactively to January 1, 2011 irrespective of the fact that SB 2(1x) is not yet effective law. For instance, parties assert that SB 2(1x) mandates a "clean break" from the current RPS program[2] and that procurement banked prior to January 1 should not "carry forward" for compliance purposes.[3] These parties, however, misinterpret statutory provisions in SB 2(1x) and overlook the practical realities faced by retail sellers.

As an initial matter, the simple fact that the first compliance period under SB 2(1x) begins in 2011 does not require the Commission to prohibit the use of previously banked

[2] CalWEA/LSA Comments at 3; *see also* PG&E Comments at 3, SCE Comments at 4-5.
[3] PG&E Comments at 24; *see also* SCE Comments at 19.

procurement to satisfy compliance obligations going forward or otherwise "draw a line in the sand" beginning January 1. For instance, with respect to banked procurement, SB 2(1x) merely directs the Commission to adopt forward looking rules that, beginning January 1, 2011, allow retail sellers to apply excess procurement in one compliance period to a subsequent compliance period.[4] This provision does not prohibit – either explicitly or implicitly - the use of procurement banked prior to the effective date of SB 2(1x) to meet compliance obligations. Indeed, such an interpretation would be inconsistent with the "grandfathering" provisions in new section 399.16(d), which specifically preserve the value of procurement transactions entered into before June 1, 2010.

Furthermore, the Governor did not sign SB 2(1x) until April 12, 2011. By this time, retail sellers had already begun procurement activities and made decisions in reliance on the existing RPS rules. Under these circumstances, the wholesale retroactive application of SB 2(1x) to January 1, 2011 would be unfair and could potentially penalize retail sellers and their customers for decisions that were, in all respects, consistent with the law and RPS rules in effect at the time the decisions were made.

II. Minimum Quantity and Long Term Contracting Requirements Should Not Unnecessarily Limit Procurement Options

Several parties urge the Commission to carry forward the requirement that long-term contracts for the minimum quantity must be signed in the same year as short-term contracts sought to be used for RPS compliance.[5] Such a requirement, however, does not reflect changes to the RPS program under SB 2(1x) and would unnecessarily limit the flexibility of retail sellers to satisfy compliance obligations in the most efficient and cost effective way.

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[4] § 399.13(a)(4)(B).

[5] *See e.g.*, PG&E Comments at 16; CalWEA Comments at 12; SCE Comments at 15.

A significant change effectuated by SB 2(1x) is the move from annual RPS compliance obligations to multi-year compliance periods. This change, along with other aspects of SB 2(1x),[6] provide retail sellers with much greater flexibility in satisfying RPS compliance obligations. A retail seller now has the discretion to delay or expedite procurement in any given year without penalty so long as the retail seller's procurement obligation for the multi-year period is satisfied. This, in turn, allows retail sellers to better respond to market conditions and more cost-effectively manage procurement activities by, for example, deferring some procurement when market prices are high.

In light of this change, there is no longer any policy reason to require retail sellers to enter into long-term contacts in the same year as short-term contracts. On the contrary, such a requirement would undermine the flexibility and discretion provided to retail sellers under SB 2(1x) and could potentially raise customer costs. As addressed in CPA's opening comments, the minimum quantity requirement should only require that 0.25 percent of the preceding year retail sales be satisfied by a long-term contract, without reference to when the contract was entered into.[7]

III. Procurement Targets in the Intervening Years Should Provide Sufficient Flexibility to Cost-Effectively Meet Compliance Obligations

To the extent the Commission believes it is necessary to adopt targets for intervening years, the targets should be set in a manner that provides retail sellers with sufficient flexibility to meet compliance obligations in the most efficient and cost effective way. Accordingly, the Commission should at most adopt targets that increase modestly in the intervening years (no

[6] *See e.g.*, § 399.15(b)(2)(C) providing that retail sellers "shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."
[7] *See* CPA Opening Comments at 7.

more than 1%) and then more significantly in the last year of the compliance period.[8] Structuring interim targets in such a manner will allow retail sellers to more efficiently manage procurement activities over the course of a compliance period which should, in turn, reduce overall compliance costs.

Respectfully submitted,

/s/

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Dated: September 12, 2011

[8] *See e.g.*, PG&E Comments at 8.

VERIFICATION

I am the attorney for the Calpine PowerAmerica-CA, LLC, and I have been authorized to make this verification on the behalf of Calpine PowerAmerica-CA, LLC. Said party is located outside of the County of San Francisco, where I have my office, and I make this verification for said party for that reason.

I have read the foregoing document and based on information and belief, believe the matters in the application to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on September 12, 2011, at San Francisco, California.

/s/
Jeffrey P. Gray