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 CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC (U 933-E) ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to the Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program issued on July 15, 2011 ("ALJ Ruling"), California Pacific Electric Company, LLC (U 933-E)[1] ("CalPeco") submits these reply comments.

A review of the opening comments underscores the need for the Commission to eschew an arbitrary "one-size-fits-all" approach with regard to the Renewables Portfolio Standard ("RPS"). As CalPeco urged in its opening comments, the Commission should instead continue its policy of designing more tailored RPS programs that acknowledge the unique characteristics among diverse retail sellers. As CalPeco has also stressed, in determining new procurement targets and other compliance requirements for the RPS program for CalPeco, the Commission must recognize three characteristics that distinguish CalPeco from the other California electric utilities:

[1] CalPeco also does business in California as "Liberty Energy-California Pacific Electric Company, LLC."

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1. CalPeco is in the NV Energy Balancing Authority and its power is imported from the East. Thus, CalPeco has no participation in or electronic interaction with the California Independent System Operator ("CAISO").[2]

2. Prior to January 1, 2011, the California service territory which CalPeco now serves was part of the multi-state service territory of Sierra Pacific Power Company ("Sierra"). Thus, for RPS compliance purposes, the Commission classified Sierra as a "multi-jurisdictional utility" ("MJU"). As a California-only utility, CalPeco is not an MJU. However, the California Renewable Energy Resources Act legislation ("SB 2(1x)") makes clear that CalPeco is subject to the RPS compliance rules prescribed in Section 399.17 for utilities serving less than 60,000 customers and located outside of a California balancing authority.

3. The Commission has approved CalPeco's 5-year power purchase agreement with Sierra ("Sierra PPA").[3] The Sierra PPA obligates Sierra to supply CalPeco's "full requirements" to serve CalPeco's retail customers, including 20% from RPS-eligible renewable sources.[4] Thus, the scope of CalPeco's RPS procurement responsibilities is dramatically different from and more limited than the other California investor-owned utilities.

With this as background, CalPeco provides these reply comments to the responses made by other parties to the specific questions posed by the ALJ Ruling.

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[2] CalPeco does own and operate the 12 MW diesel-fueled Kings Beach Generation Station; however, its use is limited to maintaining local service in the Kings Beach/Incline Village communities during emergency periods in which transmission outages disrupt power deliveries from Nevada supply sources. The generation from Kings Beach is restricted by permits to no more than 1,440 MW annually. *See* Decision ("D.") 10-10-017, mimeo at 20.

[3] Sierra has also executed a "commitment letter" which obligates Sierra to offer to supply CalPeco's full requirements under a new power purchase agreement (for up to an additional five years) with pricing based upon Sierra's system average costs. *See* Amendment No. 1 included within the Sierra PPA in *Application re Transfer of* Control, A.09-10-028, Exhibit 10.

[4] D.10-10-017, mimeo at 20.

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I. CALPECO'S REPLY TO RESPONSES TO QUESTION 2 -- SECTION 399.15(b)(2)(C) DOES NOT ALLOW THE COMMISSION TO SET PROCUREMENT OBLIGATIONS FOR THE INTERVENING YEARS IN THE 2014-2016 AND 2017-2020 COMPLIANCE PERIODS

Some parties (*e.g.*, Coalition of Utility Employees ("CUE") and The Utility Reform Network ("TURN")) advocate the "use of a 'linear trend' for setting procurement obligations for the 2014-2016 and 2017-2020 compliance periods."[5] Others (*e.g.*, Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") (collectively, the "Large IOUs") and the Division of Ratepayer Advocates ("DRA")) support a more "concave" approach, with smaller initial increases in the earlier years of each compliance period followed by a larger jump at the compliance years (*i.e.*, 2016 and 2020).[6]

Presumably, these parties propose the imposition of incremental procurement targets in the intervening years to ensure that:

> [T]he quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable resources achieves 25 percent of retail sales by December 31, 2016 and 33 percent of retail sales by December 31, 2020.[7]

However, setting individual compliance targets for the intervening years (*e.g.*, 21.5% for 2014 and 23.5% for 2015) directly contravenes Section 399.15(b)(2)(C):

> Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year.

The absence of any intervening year RPS target percentages in SB 2(1x), combined with the objective that retail sellers demonstrate "reasonable progress," underscores the Legislature's

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[5] *See*, e.g., Opening Comments of CUE and TURN, at 2; Opening Comments of the Independent Energy Producers Association ("IEP"), at 4; Opening Comments of the Union of Concerned Scientists ("UCS"), at 3.

[6] Opening Comments of PG&E, at 7-8; Opening Comments of SCE, at 9; Opening Comments of SDG&E, at 6; and Opening Comments of DRA, at 4.

[7] Section 399.15(b)(2)(B).

appropriate intent to avoid micro-managing the manner in which retail sellers progress to the 25% and 33% requirements.

Moreover, imposition of increasing annual targets, as some parties propose, will necessarily increase the costs of RPS procurement and the compliance and associated administrative costs for both retail sellers and this Commission. Relative to the Large IOUs, CalPeco would be particularly and unnecessarily harmed. While the Large IOUs are continuously in the process of procuring additional and replacement RPS power, as mentioned previously, the Commission has authorized CalPeco to procure its full RPS requirements through the Sierra PPA. It is intended to supply CalPeco with both its physical and RPS power requirements for its 5-year term (January 2011 – December 2015).[8]

Thus, imposing upon CalPeco a new and different obligation for continuous procurement, as the Large IOUs currently engage in, to meet intervening year procurement targets (which SB 2(1x) specifically disallows) will subject it and its electric consumers to an unnecessary increase in procurement costs. These incremental costs will far outweigh any possible benefit from the negligible increase in RPS power that CalPeco would be obligated to procure in the intervening years.[9]

II. CALPECO'S REPLY TO RESPONSES TO QUESTION #6 –ANY RULE THE COMMISSION MAY ADOPT REQUIRING A MINIMUM PERCENTAGE OF LONG-TERM RPS CONTRACTS FOR THE LARGE IOUS SHOULD NOT BE ARBITRARILY IMPOSED ON OTHER ENTITIES

The Large IOUs and other parties contend that "the Commission should implement Section 399.13(b) consistent with the principles established by the Commission in D.07-05-028," and thus the Commission should, despite the passage of SB 2(1x), perpetuate its existing policy (initiated on its own and without legislative guidance) to require a minimum percentage of long-

[8] *See* A.09-10-028, Exhibit 10.

[9] CalPeco's average MW load is 62 MW; thus its annual RPS requirement at 20% is 108,000 MWh (*i.e.*, 12 MW on average each hour). Increasing from 20% to 21.5% would increase its average hourly procurement obligation by just over 1 MW (*i.e.*, 116,000 MWh annually).

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term RPS contracts for retail sellers.[10] However, the comments of the advocates for the preservation of this policy focus only on the consequences of the policy on the Large IOUs. The Commission must carefully assess the inevitable disparate impact that any RPS implementation rule it imposes may have on entities other than just the Large IOUs.

Section 399.13(b) importantly allows the Commission some flexibility; it does not dictate that the Commission must establish the same minimum quantity of resources procured through contracts of at least 10 years' duration for all retail sellers. Accordingly, and with particular respect to CalPeco's "one-off" circumstances, including its status as a Section 399.17 utility, the Commission should not impose any minimum quantity of resources to be procured through contracts of at least 10 years' duration.

As CalPeco has explained, it is currently satisfying all of its RPS requirements through its purchases under one agreement whose term expires in December 2015— the Commission-approved Sierra PPA. No party advocating imposition of a minimum requirement for a certain percentage of long-term contracts assessed this unique manner in which CalPeco satisfies its RPS requirements. Arbitrary imposition of a "one-size-fits-all" obligation that all retail sellers execute supply contracts with terms of at least 10 years would mandate that CalPeco seek to amend the Sierra PPA and procure some portion of its RPS power under a 10-year power purchase agreement. The resulting consequences would be harmful in at least two respects— incurrence of unnecessary transaction costs and undoubtedly purchasing some RPS power at prices higher than the cost-of-service pricing under the Sierra PPA. Moreover, imposition of this requirement would offer zero benefits to CalPeco's electric consumers and the overall advancement of RPS power within California.

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[10] Opening Comments of PG&E, at 15; Opening Comments of SCE, at 14; Opening Comments of SDG&E, at 16; and Opening Comments of IEP, at 8.

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The relatively small size of CalPeco's retail load and associated procurement responsibilities dictates that avoidance of any absolute requirement for contracts with terms of 10 years or more will best enable CalPeco to obtain the best price for its limited RPS procurement. If a Section 399.17 utility, such as CalPeco, is able to procure any necessary, incremental RPS procurement at cost-effective prices through contracts with terms less than 10 years, there is no reason to impose any 10-year contract term obligation.

If the Commission were to impose any such requirement, in all events, it must allow each RPS MWh which CalPeco procures pursuant to the Sierra PPA to count fully towards CalPeco's RPS compliance obligation. As described earlier, the Commission authorized CalPeco to enter the 5-year Sierra PPA for purposes of both providing CalPeco with its full requirements to serve its retail load and with sufficient RPS power eligible to meet its current 20% RPS obligations.[11]

This Commission's approval of the Sierra PPA was the absolute critical component of CalPeco's purchase of the former Sierra California service territory. The Sierra PPA affords CalPeco's electric consumers the desired seamless transition from Sierra to CalPeco ownership and ensures that CalPeco procures sufficient power to serve its retail load at cost-based rates and sufficient RPS power to satisfy its RPS requirements. Imposing a requirement on CalPeco to abandon or renegotiate the Sierra PPA and the Sierra commitment letter for purposes of

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[11] The Commission also recognized Sierra's commitment to offer CalPeco's full requirements under a new power purchase agreement for up to an additional five years with pricing based upon Sierra's system average costs.

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procuring an amount of RPS power through longer-term contracts would impermissibly modify the Commission's approval of the Sierra PPA, engender unnecessary regulatory uncertainty, and likely increase procurement costs – all to the detriment of the CalPeco electric consumer and with no benefit to any constituency or policy.

Respectfully submitted,

/s/

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Dated: September 12, 2011

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VERIFICATION

I am the attorney for California Pacific Electric Company, LLC (U 933-E) ("CalPeco"), and I have been authorized to make this verification on the behalf of CalPeco. 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/
Vidhya Prabhakaran