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

JOINT REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND RETAIL ENERGY SUPPLY ASSOCIATION ON PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3 of the California Public Utilities Commission ("CPUC" or "Commission") Rules of Practice and Procedure, the Alliance for Retail Energy Markets ("AReM")[1] and the Retail Energy Supply Association ("RESA")[2] (together, "AReM/RESA") submit these joint reply comments on the proposed *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard* ("PD" or "Proposed Decision") of ALJ Simon. For the reasons provided below, the CPUC should reject various calls for imposing additional rules or restrictions not contemplated by the statute and therefore constituting legal error. Specifically, (i) there should be no concurrent, parallel contracting requirements for substitute energy[3] or restrictions on which counterparties can resell energy associated with Product 2 procurement;[4] (ii) Southern California Edison Company's ("SCE")

[1] AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

[2] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[3] SCE Comments, page 11; TURN Comments, pages 4-6;

[4] UCS Comments, pages 3-4;

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statements that all retail sellers should be subject to same advanced contracting and showing as the Investor-Owned Utiilities ("IOUs") is not supported by the statute and should be rejected;[5] (iii) there should be no special grandfathering treatment of utility owned generation built prior to June 1, 2010;[6] (iv) distributed generation ("DG") production should not be automatically relegated to Product 3 category;[7] and (v) product content category percentages must be applied in a prospective manner to avoid contract impairment issues.

II. REPLY COMMENTS

A. Imposing additional requirements beyond statutory elements for Product 2 eligible procurement will increase costs to customers and must be rejected.

The CPUC should reject parties' recommendations for additional procurement rules for the Product 2 "firmed and shaped" category. There is no statutory requirement that contracts providing substitute energy must be executed by a particular time, be of a particular minimum duration, or that they must have a fixed price. Imposing such additional rules on procurement that are beyond the statutory eligibility criteria will do nothing more than create new risks that RPS obligated entities will be forced to enter into uneconomic commercial arrangmenets. TURN and others[8] who have made these recommendations provide no justification or explaination of how these new rules and new risks will advance the goal of achieving a 33% RPS. AReM/RESA's opening comments demonstrated the need for having flexibility to characterize deliveries as Product 1 (contemporaneous import) or Product 2 (firmed and shaped) in light of changes in transmission availability. The Commission should reject

[5] SCE Comments, pages 5-6.

[6] SCE Comments, page 13-14.

[7] NextEra Comments, page 15; Ibendrola pages 8-9;

[8] See TURN Comments, pp. 4-6; CEERT (Category 2 energy cannot be resold to generator; Contract for commercially reasonable period of time), page 7; DRA (requiring substitute energy for same term as renewable energy) pages 2-3; Ibendrola (Category 2 cannot be sold back to generator, should include minimum contracting lengths and fixed price) pages 11-14; and UCS (prohibit selling back to generator) pages 3-4.

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imposition of additional requirements that impede commercial innovation, increase costs and instead focus on the mechanisms needed to support claims of eligibility and validation by the CEC.[9]

B. SCE's recommendation that all retail sellers should be subject to same advanced contracting review requirements must be rejected.

SCE recommends that all retail sellers, including electric service providers ("ESPs") and Community Choice Aggregators ("CCAs"), be subject to the same contracting requirements.[10] Similarly, Powerex recommends that there should be an upfront showing of a delivery plan for Product 1 resources.[11] These recommendations must be rejected. The IOUs' procurement activities are subject to the Commission's oversight to protect ratepayers from imprudent cost incurrence, and therefore it is appropriate for the Commission to have distinct rules applicable to IOU contract review. However, the CPUC does not regulate the prices that non-IOU retail sellers charge their customers.[12] Accordingly, imposing the same contracting and review obligations on non-IOU entities is not required, is outside of Commission jurisdiction, and should not be imposed.[13] Moreover, for reasons previously stated, there should be no additional concurrent and parallel contracting requirements for Product 2 for *any* retail sellers.

C. Utility-owned generation built prior to June 1, 2010 should not have special grandfathering treatment.

SCE's comments ask that utility-owned generation ("UOG") built before June 1, 2010 should not be subject to the product content categories, but should instead be grandfathered and therefore

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[9] See, CEERT Comments, p. 8; Idaho Wind Comments, pp. 4-5; NextEra Comments, p. 13; PG&E Comments, pp. 9-12; SCE Comments, pp. 10-11; SDG&E Comments, pp. 10-12; Shell Energy Comments, pp. 9-10; WPTF Comments, pp. 11-12; .

[10] See, SCE Comments, page 5-6, 11.

[11] See, Powerex Comments, p. 2.

[12] The Commission does not have jurisdiction over ESPs' rates or terms and conditions of service pursuant to Pub. Util. Code § 394(f).

[13] See, D.11-01-026, pp. 12-16 and 20-23 (finding that while ESPs must submit RPS procurement plans, ESP contracts and prices are not subject to Commission review or approval); see also D.05-11-025, p. 12 ("this Commission does not set rates or rates of return for ESPs, or review their overall procurement plans…"); D.06-10-019, p. 12 ("ESPs do not need to seek our advance approval of their RPS procurement plans.").

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cateogized as Product 1 for all of their output. AReM/RESA understands SCE's desire to have clarity on the treatment of its supply portfolio, but to grant SCE's request here would be discrimatory, since the Commission has specifically deferred rulings on grandfathering issues until a later decision. When that decision is issued, SCE can determine if it provides the grandfathering treatment that it believes is appropriate for its resources; until then, it is premature and discrimatory to make any ruling on this issue.

D. DG production should not be automatically relegated to Product 3 category.

The opening comments of AReM/RESA and a number of other parties'[14] noted why it is legally incorrect to automatically relegate in-state DG production consumed on-site to Product 3 status. The Commission should reject the position of those other parties[15] asserting the in-state renewable DG does not provide generation eligible for Product 1 status because it may be unbundled.

E. Applicability of product category rules applicable should be prospective only.

SCE and SDG&E[16] each raise the issue of when the product content categories should become applicable. AReM/RESA agrees that clarity is needed, but the clarification should be that it is the December 10, 2011 date, and not the January 1, 2011 date, that triggers the requirement to meet any specific CPUC-imposed elements for a particular product type. It would not be reasonable to retrospectively impose a new contracting regime so late in the year since any contracts executed or delivered in the period between June 1, 2010 and December 10, 2011 could not have anticipated what the CPUC would require. Moreover, for those resources already delivered, there is no means to cure any

[14] AReM/RESA Comments, page 9-10; CWCCG Comments, pages 1-2; CCSF Comments, pages SCE Comments, page 9; PG&E Comments, page 4-6; IEP Comments, pages 12-13; PacifiCorp / BVES Comments, pages 5-6; SCPPA Comments, pages 2-9; LACSD Comments, pages 9-10; Noble Solutions, pages 3-4; Leaf Exchange Comments, pages 2-7; LADWP pages 5-6; Joint Solar Parties Comments, pages 2-5.

[15] See, NextEra Comments, page 15; Iberdrola Comments, pages 8-9;

[16] SCE comments, page 13 (arguing it must be January 1, 2011); See, SDG&E comments, page 13 (asking for clarity as to whether it is December 10, 2011 or January 1, 2011).

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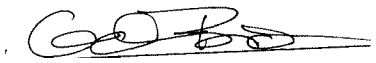
potential deficiency. SCE's position that parties were on notice that procurement made for RPS compliance would be subjected to the statutory product content categories beginning January 1, 2011, is entirely distinct from suggesting that those requirements the CPUC adopts as of December 10, 2011 should be imposed retrospectively. Parties to existing arrangements need time to transition out of existing arrangements and, if possible, rework arrangements to meet new structures.

III. CONCLUSION

AReM/RESA urge the adoption of the revisions and modifications presented herein.

Respectfully submitted,



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VERIFICATION

I am an agent of the respondent corporation herein, and am authorized to make this verification on its 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 forgoing is true and correct.

Executed on November 1, 2011 at Sacramento, California.

/s/
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