

**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)

**OPENING COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON
THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS
ON PROCUREMENT EXPENDITURE LIMITATIONS FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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Pursuant to the January 24, 2012 *Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program* (“Ruling”), the Union of Concerned Scientists (“UCS”) respectfully submits these initial comments.

The Commission is tasked with establishing a procurement expenditure limitation for the California Renewables Portfolio Standard (“RPS”) program as a result of the enactment of Senate Bill (“SB”) 2 (1X). This legislation recognizes the unique environmental and economic benefits that will be accrued by ensuring 33 percent of the state’s electricity needs are met with clean, renewable resources by 2020. Specifically, Public Utilities Code Section 399.11(b) identifies several benefits intended for California as a result of achieving 33 percent renewables by 2020, including the displacement of fossil fuel generation, a reduction in air pollution, the achievement of climate change goals, fostering resource diversity, and the promotion of stable rates for electric service. At the same time, the legislation intended to prevent the RPS program from creating a disproportionate rate increases. UCS believes these two goals do not contradict each other and the establishment of the RPS procurement cost limitation must balance both.

With this context in mind, UCS suggests the Commission approach the procurement expenditure limitation with the following principles:

- *The RPS procurement expenditure limitation should provide for a realistic path for achieving the 33 percent requirement.* As the Commission knows well, California’s commitment to clean, renewable energy investments dates back almost a decade to the first RPS law enacted

in 2002. Today, achieving the 33 percent RPS by 2020 cannot be considered a stand-alone program. Rather, a successful RPS program is a critical component of the state's plan to meet the greenhouse gas emission reduction requirements established by Assembly Bill ("AB") 32.¹ For this reason, the Commission must take care to create a procurement expenditure limitation that accounts for the realistic costs of achieving the 33 percent RPS in a manner set forth by the regulation. In addition, Public Utilities Code 399.16(b) and D.12-11-052 set forth specific procurement content requirements that will impact the costs of the RPS program, which also must be considered in the procurement expenditure limitation.

- *The RPS procurement expenditure limitation should recognize the unique benefits provided by renewable energy.* Section 399.11(b) identifies several benefits intended for California as a result of achieving 33 percent renewables by 2020. These include displacing fossil fuel consumption, reducing air pollution, meeting climate change goals, fostering resource diversity, and promoting stable rates for electric service. Some of these benefits are extremely difficult to quantify. The requirements to reduce greenhouse gas emissions required by AB 32 exist independently from the RPS. Alternative methods for doing so without the RPS could be more expensive. SB 2 (1X) explicitly recognized this and included language that allows electrical corporations to continuing procuring renewable energy resources once the procurement expenditure limitation is exhausted if they can do so without exceeding a *de minimis* increase in rates.²
- *The RPS procurement expenditure limitation should be flexible, to account for the significant uncertainty regarding the timing of project development and the actual cost of achieving a 33*

¹ See California Air Resources Board *Climate Change Scoping Plan*, available at: http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

² Pub. Util. Code § 399.15(f).

percent RPS. As the Commission knows, not all approved RPS contracts become operational. The Commission's latest RPS Quarterly Report to the Legislature identifies a contract failure/delay rate of as high as 40 percent.³ In addition, uncertainty surrounding actual levels of energy efficiency and electricity loads will impact RPS requirements. There is also uncertainty about the actual costs of RPS-eligible generation. For instance, in the last two years, bid prices for photovoltaic ("PV") projects have decreased dramatically as a result of a more competitive and experienced solar market. Federal policies to support renewable energy, which dramatically influence procurement costs, may or may not be renewed in the future. It is essential that the procurement expenditure limitation be flexible enough to account for all of these sources of uncertainty.

- *The RPS procurement expenditure limitation should recognize the unique value provided by certain renewable energy resources.* For instance, small installations of renewable distributed generation, which is an integral part of the governor's renewable energy policy agenda, may provide specific locational grid and economic benefits, but may cost more than utility-scale solar. Geothermal projects, which may have higher capital costs than other renewable energy resources, provide valuable baseload generation. Other types of renewables may be able to co-locate storage facilities that provide an overall better product for the grid to integrate. The RPS procurement expenditure limitation must be flexible enough to incorporate these additional benefits unique to different renewable energy technologies.

With these principles in mind, UCS answers the Commission's specific questions below.

³ California Public Utilities Commission, RPS Quarterly Report 4th Quarter 2011, at 8.

Question 1: Procurement expenditure limitation methodology

UCS believes the Commission should adopt a uniform methodology that will determine a procurement expenditure limitation for each investor-owned utility (“IOU”). Each IOU will take a unique path for meeting its 33 percent RPS requirements, but the inputs for determining procurement expenditure limitations should be the same for all IOUs.

Question 2: Procurement counting towards the procurement expenditure limitation

Section 399.15(c) is clear that the expenditure limitation applies to procurement expenditures for “all eligible renewable energy resources used to comply with the renewables portfolio standard.” Thus, all RPS-eligible procurement that will be credited towards RPS obligations should be covered by the procurement expenditure limitation. This includes all of the specific scenarios posed by the Commission in this question and should also bundled procurement obtained through the IOU’s competitive solicitation and the purchase of unbundled RECs.

Section 399.15(d)(3) explicitly excludes “indirect” costs including “imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.” UCS also suggests that any revenues generated through the sale of excess RPS-eligible generation or renewable energy credits (“RECs”) be credited towards the IOU’s expenditure limitation.

Generally, the RPS procurement expenditure limitation for each IOU should be calculated by estimating the renewable procurement costs associated for each IOU’s specific

path for meeting the overall RPS procurement requirements established in D.11-12-020 and D.12-11-052.

Questions 3, 4, 5: Time period for procurement expenditure limitation

Section 399.15(c) specifies that the procurement expenditure limitation shall apply to all renewable energy procurement costs associated with the RPS program. The statute and D.12-11-020 establishes procurement obligations for three compliance periods (2011-2013, 2014-2016, 2017-2020) and the maintenance of 33 percent renewables after 2020. UCS believes it does not make sense to segment the procurement expenditure limitation by compliance period since projects may be delayed and come online in a different compliance period than originally anticipated. Therefore, UCS believes the procurement expenditure limitation should apply to all RPS costs associated with meeting all compliance requirements for the RPS program. Although this technically includes costs associated with maintaining a 33 percent requirement after 2020, UCS believes that the additional costs associated with this maintenance will be minimal, and therefore it is not necessary for the Commission to address post 2020 costs in great detail at this time. UCS does not believe the intent of SB 2 (1X) was to include RPS procurement costs associated with the 20 percent RPS program that are already reflected in rates in the procurement expenditure limitation required by § 399.15(c).

Question 6: Procurement plans and reevaluation

UCS believes the IOUs annual RPS procurement plans will provide useful information for developing the RPS procurement expenditure limitation. Section 399.13(a)(5) requires procurement plans to contain a status update of contracted projects and a risk analysis of project

failure, which will be helpful data points in understanding when actual RPS procurement costs will be incurred. However, UCS is not convinced that the basic informational requirements of the annual RPS procurement plans are sufficient to calculate the procurement expenditure limitation. In fact, § 399.15(c) requires the Commission to take into account at least three data points: the most recent RPS procurement plan, procurement cost estimates for each IOU's specific path to 33 percent renewables, and project delays or failures. Procurement cost estimates to reach 33 percent on a system level were calculated in the long-term procurement planning ("LTPP") proceeding R.10-05-006, but were not specific to each IOU and contained many assumptions that may need to change over time. UCS believes that relying upon E3's modeling results provide another helpful data point, but should be approached with a degree of caution given the significant uncertainty of what reaching 33 percent will actually look like and cost by 2020.

There is a tension between the need to periodically reevaluate the procurement cost limitation to ensure the mechanism is accurate and realistic, and keep assumptions stable to reduce market uncertainty. UCS believes it is reasonable to reevaluate the procurement expenditure limitation once during a compliance period by truing up cost estimates with actual cost information once projects have come online. Section 399.15(e) already requires the Commission to prepare a report in 2016 for the legislature that will assess whether the procurement expenditure limitation is adequate and realistic to achieve the procurement obligation associated with the 2017-2020 compliance period. A similar report could be prepared in 2013 to assess whether the procurement expenditure limitation is adequate and realistic to achieve the 2014-2016 compliance requirements. SB 836, enacted on October 8, 2011, requires the Commission to submit an annual report to the legislature with RPS procurement cost information, which will provide one mechanism for evaluating actual costs against projections.

Question 7: Data sources

UCS strongly believes that the Commission should rely on publicly available information to develop the procurement expenditure limitation. In cases where the Commission believes making data public will threaten the confidentiality of individual contract prices, data can be aggregated as it was recently done for the Commission’s RPS Quarterly Report. As mentioned above, the E3 modeling performed for the LTPP also provides useful information, but may not be utility-specific enough to exclusively rely upon for an individual IOU procurement expenditure limitation. One approach could be to rely upon E3’s modeling, but build in a margin of error to account for the uncertainty associated with actual project timing and procurement costs, the unique benefits of certain types of renewable resources like distributed generation or baseload geothermal, and the different pathways a utility may take in meeting the 33 percent RPS.

Question 8: Project delays and cancellations

The Commission should consider a project “delayed” when its online date is postponed, but the project still plans to move forward and the IOU is still counting on its generation to meet an RPS requirement. A “cancellation” occurs when the project is officially not moving forward and the IOU is no longer considering it as a part of its strategy to meet an RPS requirement. Section 399.13(a)(5)(D) requires each IOUs to submit an annual RPS procurement plan that contains a “status update on the development schedule of all eligible renewable energy resources currently under contract.” In addition, § 399.13(a)(5)(F) requires the plans to contain “an assessment of the risk that an eligible renewable energy resources will not be built, or that

construction will be delayed, with the result that electricity will not be delivered as required by the contract.” These two statutory requirements should provide a sound basis for understanding the risk of project delays and cancellations. As part of its authority established in § 399.13(a)(1), the Commission should provide the IOUs with guidance regarding the specific information that will be needed to determine which projects are delayed and which are cancelled, for the purposes of tracking and reevaluating the procurement expenditure limitation.

Questions 9 & 10: Calculating the procurement expenditure limitation

UCS recommends that the procurement expenditure limitation be calculated for the entire RPS procurement obligation through 2020 and reevaluated once a compliance period. For details on this proposal, please see UCS’s response to Question 6. UCS does not believe it is necessary to determine a schedule for reevaluating the procurement expenditure limitation for the years after 2020 at this time. For more details, please see UCS’s response to Questions 3,4 & 5.

Question 11: Minimum procurement level

IOU annual procurement plans should provide information on assumed levels of project failure and cancellation (see Question 8). The Commission should use this information to inform its adoption of minimum procurement margins, as required by § 399.13(a)(4)(D). This minimum margin should reflect the amount of projects that might be delayed or cancelled, so that utilities have adequate supplies of renewables that will ensure they do not fail to meet RPS requirements when some projects are delayed or cancelled. An IOU-specific procurement expenditure limitation should account for the additional renewables an IOU will be expected to procure to create a cushion that will prevent noncompliance because of inevitable project delays or failures.

Question 13: RPS resource diversity

UCS believes that the RPS procurement expenditure limitation should incorporate the value of resource diversity, and the unique resources that different types of RPS-eligible generation resources provide, but does not think the Commission should develop procurement expenditure limitations that are broken down by technology or geographic location. This level of analysis would be too granular and most likely incorrect or inappropriate. However, UCS does believe that the flexibility built into the mechanism should consider the additional benefits that certain types of renewable energy provide, even if they cost more. For instance, small installations of renewable distributed generation, which is an integral part of the governor's renewable energy policy agenda, may provide specific locational grid and economic benefits, but may cost more than utility-scale solar. Geothermal projects, which may have higher capital costs than other renewable energy resources, provide baseload generation. Other types of renewables may be able to co-locate storage facilities that provide an better overall product for the grid to integrate. UCS does not think it will be possible, nor is it necessary, to estimate where these potentially more expensive, but more beneficial projects may occur or how much more they would cost, beyond making assumptions for the program requirements that already exist through the feed-in tariff and the renewable auction mechanism. Rather, UCS believes this is additional evidence for why the Commission should build flexibility into the procurement expenditure limitation.

Question 14: Procurement expenditure limitation as it applies to individual contracts

UCS believes the Commission is still responsible for evaluating and approving each RPS contract, based on the IOU's least-cost best-fit analysis and through the lens of its general ratemaking authority. The establishment of the RPS procurement expenditure limitation should not change the Commission's individual contract approval process. In other words, the Commission should not treat an individual contract differently in its approval process depending on how it will impact the overall procurement expenditure limitation.

Question 15: Monitoring

As stated in the response to Question 14, UCS does not believe that the RPS procurement expenditure limitation should change the Commission's individual contract approval process. However, the impact of each approved RPS contract on the overall procurement expenditure limitation should be tracked by the Commission. UCS believes that this could happen on a quarterly basis timed with the RPS Quarterly Report to the legislature, or annually. Monitoring the impact of contracts on the total procurement expenditure limitation will be another important data point to be incorporated into the reevaluation that UCS suggests happen once a compliance period, and at minimum, the reevaluation required by § 399.15(e).

Respectfully submitted,



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Dated: February 16, 2012

VERIFICATION

I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are 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 is true and correct.

Executed on February 16, 2012 in Berkeley, California.

A handwritten signature in cursive script that reads "Laura Wisland". The signature is written in black ink and is positioned above a horizontal line.

Laura Wisland