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 R.11-05-005

COMMENTS OF THE GREEN POWER INSTITUTE ON THE ALJ'S RULING REQUESTING COMMENTS ON RPS EXPENDITURE LIMITATIONS

February 16, 2012

Gregory Morris, Director
The Green Power Institute
a program of the Pacific Institute
2039 Shattuck Ave., Suite 402
Berkeley, CA 94704
ph: (510) 644-2700
fax: (510) 644-1117
gmorris@emf.net

COMMENTS OF THE GREEN POWER INSTITUTE ON THE ALJ'S RULING REQUESTING COMMENTS ON RPS EXPENDITURE LIMITATIONS

Pursuant to the January 24, 2012, *Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program*, in Proceeding R-11-05-005, the **Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program**, the Green Power Institute (GPI), the renewable energy program of the Pacific Institute for Studies in Development, Environment, and Security, provides these *Comments on RPS Expenditure Limitations*, which address the questions posed in the *Ruling*.

The *Ruling* is focused on the topic of cost limitations for the state's RPS program that are contained in SB 2 (1x), the 33-percent RPS legislation. In the initial phase (pre-2011) of the RPS program cost limitations were applied at the individual contract level. In redesigning certain aspects of the program, the new legislation chose a different direction for programmatic cost control, aiming limits at the retail-seller level rather than at the individual-contract level, and eliminating the use of the MPR. Individual contracts must still obtain Commission approval, the nature of which varies with the type of contract, but the overriding principle is that they must meet the just-and-reasonable standard that governs all utility-procurement activities.

The statutes in the new legislation that establish the procurement-expenditure limitations, §399.15(c)-(g), are actually quite vague about what form the new programmatic cost limitation should take, thus delegating broad discretion to the Commission. Our great hope is that the Commission will emphasize simplicity and flexibility in creating cost-control rules pursuant to §399.15(c)-(g) for the new (post-2010) phase of the state's RPS program. The old cost-control mechanism, based on the MPR, was widely viewed as a hindrance to renewable energy development during the previous phase of the program. It is crucially important for the Commission to ensure that the rules it establishes for the current phase of

SB_GT&S_0221300

the program are workable and promote renewables development, while also protecting ratepayer pocketbook interests.

Based on our reading of PUC §399.15(c)-(g), it seems clear that the legislature intends that the cost limitation that is applied to each utility's RPS procurement efforts should be used as a tool to monitor and control the utilities' costs of RPS procurement, not a hatchet that excuses a utility from compliance with the statute if costs exceed some arbitrarily-imposed standard. The statute expressly provides for cost limitations adopted by the Commission to be readjusted if they prove to be unnecessary or overly restrictive. We believe that the primary check on individual RPS contracts should be the same as is used for all procurement activities, the application of the just-and-reasonable principle.

The *Ruling* poses 15 questions, which we address below by question number. Due to circumstances and resource limitations, we are only able to address selected questions from the *Ruling*.

1. Section 399.15(c) provides that a procurement expenditure limitation must be established "for each electrical corporation." How should the procurement expenditure limitation methodology reflect this instruction?

The statute specifies that a cost limit should be established for each IOU. Nowhere in the statute does it specify that the limits for different IOUs have to be the same, nor that they have to be based on the same methodology or assumptions. Indeed, the statute does not actually specify that the cost limitation for a particular utility has to be based on an equation or a calculation. Thus, the answer to this question depends, in part, on the overall design approach for the cost-limitation methodology that is adopted. The simpler the program design, the easier it will be to establish uniformity across IOUs.

2. Section 399.15(c)(2) provides that "the costs of all procurement credited toward achieving the renewables portfolio standard" should count towards the procurement expenditure limitation. Please identify the types of procurement that should be included in this requirement and identify any special rules or methods that may be required to account for the costs. Please identify all "costs" that are implicated by this requirement, taking into account those costs that are excluded by Section 399.15(d)(3).

SB_GT&S_0221301

Section 399.15 is part of the RPS statutes, so it seems logical that the cost limitation should apply to all procurement that is tracked through WREGIS and counted towards a utility's RPS obligation. In our opinion, the key word in this part of the code is **cost**, which we interpret as being actual expenditures, not projected or estimated future expenditures. In many ways, this parallels the confusion that many seem to have between contracts for new generating facilities, and operational new generating facilities. Whatever form of cost limitation that is applied to the RPS program, it should be based on actual expenditures during a given period of time, not projected or estimated future expenditures that are dependent on contracts being turned into successful operating projects.

The other key word in the code section quoted in Question no. 2 is **procurement**. The RPS cost limitation is to be applied to the procurement of RPS-qualifying energy (RECs), not any and all costs that might be attributable to the RPS program. The costs of energy procurement during a given period of time are fairly straightforward to determine, especially for products that are purchased from third-party suppliers. We believe that the cost limitations should be based on a utility's procurement requirement for a given period of time, and the reasonable cost of procuring renewable energy, possibly weighted to a utility's expected renewable-energy-resource mix.

3. Should the procurement expenditure limitation methodology provide a single limitation for the time period 2011-2020?

We believe that setting a single expenditure limitation for the ten-year period 2011 – 2020 would not be appropriate, nor would it be responsive to the statute. The purpose of the expenditure limitation is to monitor and guide the RPS procurement activities of the utilities, and that has to be done on an ongoing basis of some kind in order for it to be able to have any usefulness.

4. Should the procurement expenditure limitation methodology provide a limitation for a different time period or set of time periods?

In the opinion of the GPI, the most effective way to use the procurement expenditure limitation is to establish initial annual RPS procurement budgets for the utilities, based on

SB_GT&S_0221302

their projected annual RPS obligations, resource base, current commitments, and future needs. The annual budgets should also be sensitive to the RPS program's defined multiyear compliance periods, particularly with regards to how utilities are likely to fashion their procurement strategies throughout the course of the three compliance periods. For example, it would make sense to set annual procurement limitations for each utility, but allow averaging of the budgets within each defined compliance period for purposes of its application.

6. Section 399.15(c)(1) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, "the most recent renewable energy procurement plan."

Each utility's renewable energy procurement plan presents information about the mix of renewable resources and technologies that the utility expects to rely on for purposes of meeting their RPS obligations over the coming decade. This information can guide the budget that is needed for each utility to meet its mandates.

7. Section 399.15(c)(2) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, "procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources."

The major state agencies that deal with energy, including this Commission and the CEC, have invested considerable resources over the past several years in producing sound, publicly-available information on the costs of building and operating renewable-energy generating facilities. For example, this Commission's LTPP proceeding (R.08-02-007 & R.10-05-006), and the RETI process, both produced a wealth of publicly-available information about the costs of renewable energy production. These sources should provide the foundation for the data that will be needed to comply with this section of the code.

8. Section 399.15(c)(3) provides that, in establishing the procurement expenditure limitation, the Commission shall rely on, among other things, "the potential that some planned resource additions may be delayed or canceled." How should the methodology take such potential into account?

SB_GT&S_0221303

The GPI has long complained that the utilities and a variety of other parties have been treating signed RPS PPAs as if they all will be developed into fully operating projects according to the original terms of their contracts. This has never been the case in the past, and it is not the case today. Project development is a difficult process, and many projects holding signed PPAs will fail to make it to the finish line, either on-time, or ever.

We believe that the programmatic cost limitation that is imposed on the IOUs should be based on actual expenditures over a given period of time, not project costs for the future. This would, among other things, avoid the kind of situation that we currently have in which many parties are complaining about how the RPS program is driving up electricity costs, when in fact the RPS program so far has cost almost nothing in terms of extracting above-market costs from ratepayers for the procurement of their energy supplies.

9. Taking into account your responses to questions 3-8, above, how often should the procurement expenditure limitation be calculated for the years through 2020, using the methodology and inputs that the Commission will adopt?

Our proposal is to use this initial process to establish annual expenditure-limitation budgets for each utility, for the period through 2020. These budgets should be updated and revisited periodically. The initiation of each subsequent multiyear-compliance period presents a logical time in which to do this. There should also be an opportunity for updating at anytime that it is deemed necessary by changing market circumstances.

11. Section 399.13(a)(4)(D) requires the Commission to adopt "[a]n appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to mitigate the risk that renewable projects planned or under contract are delayed or canceled." How should such a margin of above-minimum procurement be addressed in the procurement expenditure limitation methodology?

The rule of thumb that the CEC developed based on the first wave of development of California's renewable energy industry (1980s – 1990s) is that no more than 70 percent of signed contracts should be expected to result in operating projects, even with strong, fixed-price contracts, and utilizing commercially-proven technology. It would be useful to know

what the success rate has been so far for contracts signed during the modern RPS era (post-2002), although we are not aware of any such analysis having been done.

The GPI recommends that, absent the conducting of a study about the success performance of RPS contracts signed during the initial phase of the state's RPS program, the Commission should apply the rule-of-thumb assumption of a 70-percent success rate for projects with PPAs and using mature technologies, and lower success rates for projects with PPAs that use technologies that are in the early-commercialization phase of development.

12. Section 399.13(a)(4)(A) requires the Commission to adopt "criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources…on a total cost basis…," taking various factors into account.

It has never been clear as to just what role the least-cost / best-fit process has played in the initial phase of California's RPS program. For example, it is not known whether there are instances in which the utilities' short lists would have been different if the criterion had been simply least cost, rather than least-cost / best-fit. We believe that the procurement expenditure limitations should take into account the expected mix of resources and technologies that each utility will utilize to meet their RPS obligations.

13. Should the procurement expenditure limitation methodology take into consideration the value of diversification of resources in IOUs' RPS procurement?

Yes, the methodology certainly should take the value of diversification of resources into account in determining a utility's RPS cost limitation. Renewable energy includes a diverse group of resources and technologies. Some renewables, like solar and wind, produce intermittent energy that requires balancing from other resources available on the grid, while other renewables, like biomass and geothermal, produce reliable, schedulable energy. In addition, each utility's service territory contains a unique mix of renewable resources. PG&E's service territory, for example, has abundant biomass resources, while SCE's territory has relatively more solar.

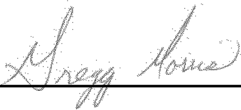
The GPI believes that each utility's procurement-expenditure budget should take into account the value of procuring renewable energy from a diverse resource base, given the electric supply needs and resource base available to each utility. Values should be conferred for benefits such as general resource diversity, value of the electricity output profile, and use of locally-available resources.

14. How should the procurement expenditure limitation be applied to the Commission's evaluation of individual RPS contracts?

The procurement expenditure limitation is not meant to be applied to the evaluation and approval of individual RPS contracts. One of the major motivations for changing from a contract-oriented cost-control mechanism to a program-level mechanism in the new phase of the state's RPS program was to avoid trying to control the cost of the RPS program on a contract-by-contract basis, and to discontinue the use of the MPR. It would be contrary to the intent of the new legislation to introduce an MPR surrogate into the determination of the procurement expenditure limitation. Cost control at the individual contract level should be based on the standard that is used for all utility procurement contracting – the just and reasonableness principle.

Dated February 16, 2012

Respectfully Submitted,



Gregory Morris, Director
The Green Power Institute
a program of the Pacific Institute
2039 Shattuck Ave., Suite 402
Berkeley, CA 94704
ph: (510) 644-2700
e-mail: gmorris@emf.net

SB_GT&S_0221306

VERIFICATION

I, Gregory Morris, am Director of the Green Power Institute, and a Research Affiliate of the Pacific Institute for Studies in Development, Environment, and Security. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the Green Power Institute on the ALJ's Ruling Requesting Comments on RPS Expenditure Limitations*, filed in R.11-05-005, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on February 16, 2012, at Berkeley, California.

Gregory Morris

SB_GT&S_0221307