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)

COMMENTS OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON RPS PROCURMENT EXPENDITURE LIMITATIONS

February 16, 2012

SARA STECK MYERS
Attorney for the
Center for Energy Efficiency and
Renewable Technologies

122 – 28th Avenue
San Francisco, CA 94121
Telephone: (415) 387-1904
Facsimile: (415) 387-4708
E-mail: ssmyers@att.net

TABLE OF CONTENTS

Page

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)

COMMENTS OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON RPS PROCUREMENT EXPENDITURE LIMITATIONS

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on Procurement Expenditure Limitations for the Renewable Portfolio Standard (RPS) Program pursuant to Senate Bill (SB) 2 (1x) (Simitian).[1] These Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the Administrative Law Judge's (ALJ's) Ruling issued in this rulemaking on January 24, 2012 (January 24 ALJ's Ruling).

I. THE COMMISSION'S IMPLEMENTATION OF THE NEW "RPS COST CONTROL REGIME" IN PU CODE §399.15(c) – (g) MUST RESULT IN A STATUTORY CONSTRUCTION CONSISTENT WITH THE PLAIN MEANING, PURPOSE AND CONTEXT OF THOSE PROVISIONS.

A. The Commission's Implementation of PU Code Section 399.15 (c) – (g) Must Follow Basic Statutory Construction Principles.

As confirmed by the Commission in Decision (D.) 11-12-052, in implementing the new SB 2 (1x) provisions governing the RPS Program, the Commission must be "guided by the basic principles of statutory construction."[2] This significant point has been made routinely in CEERT's comments in this rulemaking as the Commission works through the implementation of SB 2 (1x) as to its new or amended provisions of the RPS Program law.

[1] SB 2 (Stats 2011, Ch. 1), adding or amending portions of the RPS Program (Public Utilities (PU) Code §399.11, et seq.)
[2] D.11-12-052, at pp. 6-7.

Key requirements of these "basic principles" are (1) giving words used in a statute a plain and common sense meaning consistent with the statute's "legislative purpose,"[3] (2) ascertaining the intent of the legislature so as to effectuate the purpose of the law,[4] and (3) construing "a statute *in context*, keeping in mind the nature and purpose of the legislation."[5] As noted in D.11-12-052, the courts and the Commission are to favor "the construction that leads to the more reasonable result" consistent with the "purpose of the legislation."[6]

CEERT understands that implementing all of the changes to the RPS Program resulting from SB 2 (1x) at one time may not be possible. However, the Commission must be vigilant that its division of this law by implementation "task" - e.g., from procurement quantity requirements for retail sellers (D.11-12-020) to content categories (D.11-12-052) to, now, "procurement expenditure limitations – proceeds in a manner that does not defeat the purpose or express language of these individual provisions or the purpose and language of the RPS Program legislation as a whole. A "piecemeal" approach to that implementation, without considering the overall context or order of the legislative directions, runs the risk of statutory interpretations in conflict with the law or the Legislature's intent.

B. The Questions Posed by the January 24 ALJ's Ruling Do Not Follow the Language of Section 399.15 and Must be Corrected as to Order and Content to Produce a Reasonable Statutory Interpretation of Subsections (c)-(g).

Consistent with these applicable principles of statutory construction, CEERT believes that the questions posed by the January 24 ALJ's Ruling isolate provisions of Section 399.15 and sequence questions in a manner that does not follow the language of these provisions and does

---

[3] *California Teachers Assn.* v. *Governing Bd. of Rialto United School Dist.* (1997) 14 Cal.4th 627, 633; *People* v. *Valladoli* (1996) 13 Cal.4th 590, 597, 599, 602.
[4] *California Teachers Assn., supra*, 14 Cal.4th at 632; *Dyna-Med, Inc.* v. *Fair Employment Housing Com.* (1987) 43 Cal.3d 1379, 1386.
[5] *Dyna Med, Inc., supra,* 43 Cal. 3d at 1387, emphasis added; see also, *People V. Valladoli, supra*, 13 Cal. 4th at 602; *Squaw Valley Ski Corp.* v. *Superior Court,* (1992) 2 Cal. App. 4th 1499, 1511.
[6] D.11-12-052, at p. 7, citing *Imperial Merchant Services, Inc.* v. *Hunt* (2009) 47 Cal.4th 381, 387-388.

not account for other relevant portions of the RPS legislation (i.e., §§399.13, 399.16) or its statutorily identified purpose (§399.11). Thus, Question 1 begins the interpretation of these provisions as to the "procurement expenditure limitation" with reference to a term – "methodology" – that is never used in §399.15. By Question 2, the focus is on inclusion in that "methodology" of "costs" that seems to ignore the relevant subsections of PU Code §399.15(c) that specifically define what the Commission is to "rely on" in the first instance in "establishing this limitation."[7] In fact, Question 2 erroneously cites as "399.15(c)(2)" a later subpart of this statute ("(d)"). While this may be a matter of inadvertence, it actually sets the Commission on course to potentially implement Section 399.15 (c) – (g) in a manner that the Legislature did not intend.

For this reason, CEERT has responded to the questions posed by the January 24 ALJ's Ruling as they relate to each of these provisions and the logical order of the tasks prescribed in §399.15 in turn. CEERT believes that this approach allows a reasonable statutory construction to result.

C. Section 399.15(c)-(g), As Written and As Construed in Context with Other Relevant Provisions of the RPS Program Statute, Demonstrates a Legislative Intent that a Reasonable Limitation on RPS Procurement Costs Must Reflect Renewable Resource Value Specific to Each Utility.

In reading Section 399.15 as written and in context with the RPS Program statute as a whole (as described in more detail in Section II), CEERT believes that it quickly becomes clear that any "procurement expenditure limitation" was and is intended to be based on a utility's specific resource procurement plan, the costs of projects that can or are forecasted to be procured by the utility, and even that utility's expectations as to what projects are likely to be delayed or cancelled. While one methodology might be developed to incorporate this kind of information in

[7] PU Code §399.15(c).

establishing a limitation, the inputs are clearly intended to be utility-specific as to plans and likely sources. This approach also permits the Commission to factor in the "procurement content categories" (PU Code §399.16) implemented in D.11-12-052. These categories se[t] minimum and maximum quantities of procurement in each category"[8] and will clearly impact whether any source of renewable energy or even a renewable energy credit or certificate is available to the utility to count in meeting the applicable RPS targets by compliance period.

From CEERT's perspective, as detailed further in responses to the questions posed in January 24 ALJ's Ruling below, the Legislature clearly intended that the goal for each utility in meeting its RPS targets is to attain a diverse portfolio of renewable resources that best fit its needs and maximizes reliance on the renewable resources available to it at least cost. In this regard, the provisions added by SB 2 (1x) to PU Code §399.11, and applicable to any interpretation of §399.15, reflect this intent in detailing not only what the goals are for the 33% RPS, but now *how* this 33% RPS target is to be achieved.

Thus, PU Code §399.11(b) previously read:

> " (b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels."

Now, however, this subpart contains numerous and specific subsections encompassing the Legislature's intent that the 33% RPS target is to be met "through the procurement of *various* electricity products from eligible renewable energy resources" that will "provide *unique* benefits to California," including, but not limited to, "[m]eeting the state's need for a *diversified and balanced energy generation portfolio*," "[d]isplacing fossil fuel consumption within the state," "[r]educing air pollution in the state," "[m]eeting the state's climate change goals by reducing

[9] PU Code §399.11(b) and (b)(1), (3), (4), (5), (6); emphasis added.

emissions of greenhouse gases associated with electrical generation," and "promoting stable retail rates for electric service."[9]

This legislative emphasis on the value of a diverse portfolio of energy resources, consistent with their specific benefits and attributes, is a goal that must be kept in mind in implementing *all* of the new or amended provisions resulting from SB 2 (1x) *including* those identifying the new "RPS cost control regime."[10] Thus, the specific provisions of §399.15(c) – (g) cannot be read in isolation, but must each be construed and implemented in context of these goals.

As detailed in its responses in Section II below, in doing so, it is CEERT's opinion that the "procurement expenditure limitations" to be adopted by the Commission are to be specific and tailored to each utility and the "unique" value "various" renewable resource products and types bring to each utility's ratepayers, inclusive of environmental impacts specific to their geographic service territories. In establishing such limitations, each utility's "most recent renewable energy procurement plan" (§399.15(c)(1)) will play a key role and will permit, along with directives contained in §399.15(c)(2) and (3), the Commission to draw this link between the value of the procurement and the costs of each utility's planned RPS portfolio and ensure that each utility can only claim expenditures under the its limitations if the procurement results in energy deliveries that can count toward its RPS compliance. Doing so will encourage the utilities to plan efficiently and holistically and will prevent costs unrelated to RPS-eligible procurement counting against the utility's procurement expenditure limitation.

[9] PU Code §399.11(b) and (b)(1), (3), (4), (5), (6); emphasis added.
[10] January 24 ALJ's Ruling, at p. 2.

II.
CEERT RESPONSES TO QUESTIONS POSED BY JANUARY 24 ALJ'S RULING

In keeping with the principles discussed in Section I above, CEERT offers the following responses to the questions posed for party comment by the January 24 ALJ's Ruling. As stated in Section I above, however, it is CEERT's opinion that the order and language of these questions do not follow the law either as to the specific terms of PU Code §399.15 (c) – (g) or the statutory provisions of the RPS Program as a whole.

For this reason, and to ensure a reasonable and appropriate statutory construction of these provisions, it is CEERT's position that the questions posed by the January 24 ALJ's Ruling can and should be re-ordered and grouped into two categories – questions that are aimed at the Commission "establishing" a limitation for each utility and questions aimed at required or permitted review, revision, and monitoring of that limitation. To that end, CEERT responds to the January 24 ALJ's Ruling by grouping the first set of questions in Section A and the later questions in Section B below. It is CEERT's position, in particular, that starting with an appropriate statutory construction of §399.15(c) is the key to ensuring "answers" as intended by the Legislature.

A. Questions 1, 6, 7, 8, 11, 12, 13, and 14: *Requirements for "Establish[ing] a Limitation for Each Electrical Corporation on [RPS] Procurement Expenditures"*

> ***Question 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 January 24 ALJ's Ruling asks if this "methodology" should be the same for all IOUs in all respects, if the inputs to the methodology should be specific to each IOU, if the methodology and inputs should be IOU-specific, or if some other relationship between methodology and IOU should be established.*

As the first question posed by the January 24 ALJ's Ruling, it sets the tone for the Commission's inquiry regarding implementation of the "procurement expenditure limitation" provisions of SB 2 (1x) contained in §399.15(c) – (g). In this regard, §399.15(c) represents the

active directions to the Commission as to its obligations with respect to this task. However, nowhere in that section, or any of the related subparts (d) – (g) or subsections that follow, is the word "methodology" used. In fact, the specific legislative direction to the Commission is that the Commission "shall establish *a limitation*" on RPS procurement expenditures for "*each* electrical corporation" (not a "methodology" to determine a limitation).[11] Further, it is in the specific subsections (1) through (3) of Section 399.15 (c), not subparts (d) through (g), that the Legislature has stated precisely what information or data the Commission is to "rely on" in establishing this limitation. The determination of a "methodology" for doing so in this context is either premature or could only refer to the manner in which the Commission collects or assesses this data.

By the express terms of Section 399.15(c) and its subsections (1) – (3), the Commission has been directed, in "establishing this limitation" to "rely on" the following: (1) the "most recent renewable energy procurement plan," (2) "[p]rocurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources," and (3) "[t]he potential that some planned resource additions may be delayed or canceled."[12] The "renewable energy procurement plan" is one filed individually and annually by *each* RPS-obligated electric corporation *specific to its own needs and forecasting, including application of least cost, best fit criteria.*[13] Further, it would only be the individual utility that would know if

[11] PU Code §399.15(c); emphasis added

[12] PU Code §399.15(c)(1) – (3); emphasis added.

[13] While the original directions on such plans were contained in PU Code §399.14, by SB 2 (1x), these provisions, including additional directions, are now subsumed in PU Code §399.13. In terms of how this language has been implemented by the Commission, see, e.g., R.08-08-009 (RPS) Southern California Edison Company (SCE) 2010 RPS Procurement Plan (December 18, 2009), at pp. 1-18, Appendices A, B, and C. Specifically, SCE's plan identifies "supplies and demand to determine the optimal mix of RPS resources" *for SCE*, inclusive of consideration of varying procurement scenarios and identification of any impediments to reaching specific RPS targets by time frame and steps being taken by the individual utility (SCE) to address those impediments. (Id., at pp. 5-16.) SCE's plan also includes detail on its "least cost, best fit" evaluation of proposals, inclusive of consideration of "costs" ranging from contract payments to integration costs, as well as SCE's "current consideration" of owning renewable

its own "*planned* resource additions may be delayed or canceled."[14] As discussed in response to Question 6 below, SB 2 (1x), in adding §399.13, continues to maintain, and even expand, on the information to be provided by each utility in its annual renewable resource procurement plan.

Giving this language its plain meaning and read in context, it is reasonable to construe §399.15(c) and its subsections (1) – (3) to require that the "limitation" to be established by the Commission is to be tailored to "each" RPS-obligated electrical corporation. There is no provision for these "planning" inputs to be based on system-wide analysis or for that limitation to be uniform among utilities, other than to ensure basic conformance to factors identified in subpart (d) of Section 399.15, discussed in Section B below. The utility-centric nature of the limitation is also confirmed by subpart (f), in which the utility can exceed its cost limitation if it does not exceed a "de minimis increase in rates, consistent with the long term procurement plan established for *the* electrical corporation."[15]

Further, in undertaking this task, the Commission must also be mindful of another aspect of its SB 2 (1x) implementation – namely, the "portfolio content categories" adopted in D.11-12-052. These categories se[t] minimum and maximum quantities of procurement in each category"[16] and will clearly impact whether any source of renewable energy or even a renewable energy credit or certificate is available to any individual utility to count toward that compliance.

The Question 1 inquiries in the January 24 ALJ's Ruling, however, seem to miss the specific "instructions" of §399.15 (c) and its subsections. Again, the Commission has not been directed to develop a "methodology," other than one interpreted by the Commission to be the means of quantifying the 3 components of a "limitation" established for "each electrical

---

generation to meet its goals. (Id., at pp. 16-18; Appendix A.) Finally, "project viability" is addressed by the plan as well. (Id., at p. 34, et seq.)

[14] PU Code §399.15 (c) (3), emphasis added.

[15] PU Code §399.15 (f), emphasis added.

[16] D.11-12-052, at p. 2.

corporation." If "methodology" is given that meaning, the Commission must ensure that it requires one that (1) includes and accounts for the "most recent" renewable resource plans of each utility, (2) approximates expected costs of building, owning, and operating renewable resources, and (3) reflects the potential of delay or cancellation of a utility's planned resource additions. While there might be one "methodology" by which to account for this information, the inputs, based on the language of §399.15 (c) and its subsections, must be specific to each utility. There is no "other relationship between methodology and IOU" that is permitted or can be established consistent with the specific provisions of §399.15 (c).

It is reasonable to further construe §399.15(c) consistent with the legislative intent expressed in §399.11 that RPS-eligible "procurement" must reflect the unique benefits that include their contributions to reducing air pollution and GHG emissions, as well as a "diverse and balanced" energy portfolio.[17] From CEERT's perspective, these directives can only be achieved by developing a cost limitation that is specific to each utility's electric product needs and geographic service area. For example, the benefits of biogas, especially in terms of reducing methane gases, will be greater for a utility with a service territory that includes areas of agricultural production. Similarly, any cost limitation should also reflect the type of products – e.g., baseload or peak – that best meets a utility's customer needs or demand. In short, the "value" of specific renewable resources, coupled with their availability (including accounting for portfolio content category restrictions) to the utility will likely vary among utilities and must be accounted for on a utility-specific basis especially if resource or portfolio diversity is to be achieved and maintained.

Finally, in "establishing this limitation" in reliance on these specific sources of information, the Commission must ensure that it is not "penny wise and pound foolish" in doing

[17] PU Code §399.11(b).

so. It is important to establish a cost limitation that is intended to reflect the real world costs and value to ratepayers of achieving a 33% RPS, consistent with RPS Program constraints ("portfolio content categories"), targeted increases over each compliance period, realistic assessment of renewable development costs, and customer demand and resource availability specific to each utility. To confirm that outcome, it will be important for the Commission to ensure that the data in the utility's RPS plans and on project costs and the potential for project delay or cancellation on which it relies in establishing this limitation is as robust and publicly available as possible.

Question 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." This question asks what "elements" of these plans should be used in establishing the limitation, should the "methodology" include a means to update the limitation based on the IOUs' most recent RPS procurement plan, and should the "methodology" rely on the most recent plan, but not provide periodic updates from later plans.*

As stated above, this legislation does not reference the term "methodology." Again, if by this term, these questions are referencing the means of accumulating the data required to "establish a limitation" for "each electrical corporation," then it is clear that the Legislature intended that the procurement expenditure limitation be based on information contained in each utility's "most recent renewables procurement plan."

In this regard, the Commission has previously provided the following overview of the content of the three IOUs' renewable resource plans ("Plan") as follows:

> "Each utility, as part of fulfilling [its RPS obligations], must prepare a Plan for the procurement of RPS-eligible energy. The Plan must include but is not limited to (a) an assessment of demand and supply to determine the *optimal mix* of renewable resources, (b) use of flexible compliance mechanisms established by the Commission, and (c) a bid solicitation."[18]

In defining the respective roles of the Commission and each utility in this process, the Commission has also stated:

[18] D.11-04-030, at pp. 9-10.

> "We do not, however, write any Plan, IRP [multi-jurisdictional utility plan] or Supplement, dictate with precise detail the specific language of any Plan, IRP or Supplement.… Nor do we micromanage what is in the Plan, IRP or Supplement. Rather each utility has considerable flexibility to develop and propose its own Plan, IRP and Supplement. … Each utility is ultimately responsible for achieving successful procurement using its Plan, IRP or Supplement pursuant to, and consistent with, the RPS Program."[19]

Further, while these plans may have "common" issues, each utility proposes and offers its own individual plan, which may include separate proposals.[20] As described in Footnote 13, *supra*, the information provided in these plans is wide-ranging, but specific to each utility.

Each utility's renewable resource plan, especially inclusive of data that has been previously required by the Commission and now expanded by SB 2 (1x) (§399.13(a)(5)), can certainly enable the Commission to "establish a limitation" specific and appropriate to each utility, as intended in SB 2 (1x). In this regard, PU Code §399.13, which mirrors the language of previously numbered PU Code §399.14, continues to require the Commission to direct each electrical corporation to "annually prepare a renewable procurement plan," maintains the requirement that that each utility select eligible renewable energy resources based "least cost, best fit" criteria, but also expands the required components of these plans to specifically include:

> "(A) An assessment of annual or multiyear portfolio supplies and demand to determine the *optimal mix* of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.
>
> "(B) Potential compliance delays related to the conditions described in paragraph (4) of subdivision (b) of Section 399.15.
>
> "(C) A bid solicitation setting forth the need for eligible renewable energy resources of each deliverability characteristic, required online dates, and locational preferences, if any.
>
> "(D) A status update on the development schedule of all eligible renewable energy resources currently under contract.

[19] D.11-04-030, at p. 11.
[20] See, D.11-04-030 generally.

"(E) Consideration of mechanisms for price adjustments associated with the costs of key components for eligible renewable energy resource projects with online dates more than 24 months after the date of contract execution.

"(F) An assessment of the risk that an eligible renewable energy resource will not be built, or that construction will be delayed, with the result that electricity will not be delivered as required by the contract."[21]

In addition, "compliance reports" are required by "each" utility to detail progress toward the RPS goals relative to permitting or siting considerations and recommendations to "remove impediments to making progress toward achieving" RPS targeted procurement.[22] Such recommendations are part of each utility's renewable procurement plans today.[23] The "least cost, best fit" criteria for selecting resources to be used by each utility is also to include consideration of "cost impact," project viability, and workforce recruitment and training.[24]

The detail offered by these plans specific to each utility, especially as amplified by §399.13, confirms the merits of the Legislature identifying them as one of the three bases for establishing the procurement expenditure limitation for each utility in §399.15(c). CEERT believes that all of the information contained in these plans could be relevant to that determination.

With respect to the timing of establishing each utility's procurement expenditure limitation, CEERT believes that to give effect to reliance on "the most recent renewable energy procurement plan" in establishing the cost limitation,[25] each utility's renewable resource plan filed at the beginning of each compliance period should serve as identifying or updating the cost limitation that will apply in that period. Thus, the 2011 RPS Plans could be used to establish the cost limitation for the compliance period 2011 to 2013; the 2014 RPS Plans for the 2014-2016

[21] PU Code §399.13(a)(5); emphasis added.
[22] PU Code §399.13(a)(3)(C).
[23] See, n. 13, *supra*.
[24] PU Code §399.13(a)(1), (4), and (5).
[25] PU Code §399.15(c) (1).

compliance period limitation; and the 2017 plans for the 2017-2020 compliance period limitation.

Such an approach reasonably limits the burden of establishing this limitation annually, but also recognizes that, because these plans do not offer the 10-year planning forecast that is part of the Commission's long term procurement plan (LTPP) process, it is not appropriate to use this data to provide a cost limitation based on anything longer than each compliance period. In addition, use of later plans at the outset of each compliance period will provide the Commission the flexibility to provide a cost limitation that is responsive to changes in the renewable energy market, projects that have been delayed or cancelled, or even plans or forecasts that were not met. As noted in answer to Question 9 in Section B, CEERT does not believe that the reporting required by Section 399.15(e) limits the Commission's ability to ensure a cost limitation appropriate to each compliance period.

> ***Question 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." In this question, the January 24 ALJ's Ruling asks parties to identify the sources of data that should be used to develop this approximation and to state whether that approximation should be based on only publicly available data or differentiate between utility-owned or independently owned renewable generation.*

This question places the legislatively required building blocks of the cost limitation to be established by the Commission in the right context as to the express terms of this subsection and the statute as a whole. Namely, what data should be used to identify and calculate the "[p]rocurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources"? CEERT reserves the right to respond to this question further in reply comments, but believes that certain principles should apply to this task: (1) To the extent feasible, the Commission should rely, as much as possible, on publicly

available data to provide transparency and confidence in the final adopted limitation for each utility; (2) any differences between project costs based on ownership should not constrain this inquiry; instead, data should be collected regarding all eligible RPS development costs regardless of ownership; and (3) information regarding project costs and development should be received from the widest, most current, available sources.

On this latter point, the Commission should also consider sending out a broad, public data request to current and prospective renewable developers, both independent and utility, seeking such information. This information should also be updated at the beginning of every compliance period to permit the Commission to adopt a cost limitation by utility for each period that reflects the most relevant and current market data.

> ***Question 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? The January 24 ALJ's Ruling also asks for definition of these terms ("delay" v. "cancellation"); if these terms have a different meaning for "contracted-for RPS resources"; if the "methodology" should use data on the historical record of delays/cancellation of RPS procurement contracts for each IOU, the IOUs' projections of likely delays/cancellations in the future, or projections of such delays or cancellations; and if the "potential for delays/cancellations" should be used in the procurement expenditure limitation.*

Many of the answers to these questions are informed by the additional direction provided by SB 2 (1x) with respect to the utility's renewable energy procurement plans. Namely, pursuant to PU Code §399.13, those plans must now include, among other things, "[a] status update on the development schedule of all eligible renewable energy resources currently under contract" and "[a]n assessment of the risk that an eligible renewable energy resource will not be built, or that construction will be delayed, with the result that electricity will not be delivered as required by the contract."[26] In addition, as noted previously, the utilities are also currently required to

[26] PU Code §399.13(a)(5)(D) and (F).

identify "impediments" to achieving their RPS targets, their plans to overcome such impediments, and changes or application of the "project viability calculator."[27]

The annual renewable energy procurement plan of each utility will, therefore, be a data collection point for information on both the status and costs of delay or cancellation of RPS eligible projects under contract to the utility. The inputs on project status, however, should not end at that point. What PU Code §399.15(c)(3) calls for is for the Commission, in adopting a cost limitation, to "rely on" the "*potential* that some *planned* resource additions may be delayed or canceled."[28] Such a direction indicates that projects both with signed contracts, as well as those *forecasted* or *planned* by each utility to be a "resource addition," must be considered.

Giving the words "delayed" (held-up) and "canceled" (called off) their plan meaning, these events are sufficiently different to require cost projections of each as to both forecasted and contracted resources. Each utility's renewable energy procurement plans should also, perhaps as part of identifying "impediments" to RPS compliance, identify and even quantify the impact of the "potential" for such delay or cancellation. With the requirement of plans being annually submitted, the IOUs will also have the opportunity to regularly update any previous assumptions made during each compliance period before the cost limitation is set by the Commission for the succeeding period (see, CEERT recommendation regarding the timing of cost limitation calculations in answer to Question 6 (above)).

[27] See, n. 13, *supra*.
[28] PU Code §399.15(c)(3); emphasis added.

Question 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."The January 24 ALJ's Ruling asks how such a margin should be addressed in the procurement expenditure limitation "methodology" and how should that "methodology" treat the interaction of that margin and the potential for delays and/or cancellations.*

This question should be answered with reference to the utility's "most recent renewable resource plan," one of the required elements of the "limitation" to be adopted by the Commission pursuant to PU Code Section 399.15 (c). The principle purpose of Section 399.13, as noted previously, is to encompass and provide additional detail on the manner in which the utilities plan for and procure renewable generation.

Thus, subsection (1) of subpart (a) of Section 399.13 starts with directions to the Commission as to the timing and content of those plans. Subsection (4) requires the Commission "by rulemaking" to establish this "minimum margin of procurement above the minimum procurement level" necessary to comply with the RPS to mitigate planned project delay or cancellation. There is no requirement that the minimum margin be part of any procurement expenditure limitation it adopts pursuant to PU Code Section 399.15 (c). However, it is reasonable, *once* adopted, for it to be factored into the utility's renewable energy procurement plans and its projections of the potential for canceled or delayed projects.

Question 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. The January 24 ALJ's Ruling asks if the procurement expenditure limitation "methodology" should incorporate the "total cost basis" factors set out in this section and if that "methodology" should be used as the criterion of "least-cost" for the least cost best fit determination.*

The answer to this question also must account for how the Commission is to calculate the procurement expenditure limitation pursuant to PU Code §399.15(c). As stated in CEERT's previous answers, and made clear in that provision, the cost limitation is to be established based

on reliance on three things, one of which is the utility's "most recent renewable energy procurement plan." That "plan" includes each utility's application of the "least cost, best fit" criteria, consistent with statutory and adopted Commission principles. Section 399.13(a)(4)(A) maintains the same statutory principles contained in previously numbered §399.14(a)(2)(B).

Thus, in "establishing" the procurement expenditure limitation for each utility, the Commission, by relying on "the most recent renewable energy procurement plan," will in fact be accounting for "least cost, best fit" criteria and its application by each utility. There is no language or intent indicated by SB 2 (1x) that this procurement expenditure limitation is to serve to dictate "least cost." Instead, the converse is true. The utility's "least cost, best fit" analysis is to inform its "renewable energy procurement plan" on which the Commission is to rely in establishing that limitation.

> ***Question 13.*** *Should the procurement expenditure limitation methodology take into consideration the value of diversification of resources in IOUs' RPS procurement, including creating a set of technology-specific expenditure limitations, geographically-defined expenditure limitations, or "extra credit" for diversification by technology or geographic diversification?*

Again, CEERT asks that the Commission, in implementing PU Code Section 399.15(c) not stray from, but rather start from the precise instructions that the Legislature has given the Commission to establish this limitation. First, as noted previously, these instructions do not require the Commission to adopt a "methodology." Rather, it is for the Commission to adopt a "limitation" specific to each IOU with reliance on the utility's "most recent renewable energy procurement plan" as a starting point.

Second, Section 399.15 (c) – (g) must be read and implemented consistent with the express legislative intent for the RPS Program as a whole. By posing it as a question, Question 13 and its subparts suggest that the Commission has discretion as to whether or not resource

diversity is valued or considered in the procurement expenditure limitation. Such a conclusion is incorrect and ignores the Legislature's express *intent* in PU Code §399.11 that achievement of the 33% RPS Program target *is* to be based on procurement of "various electricity products" and the "unique benefits" of RPS eligible resources to California, including their individual contributions to reducing air pollution, meeting California's greenhouse gas (GHG) emission reductions, and "meeting the state's need for a diversified and balanced energy generation portfolio."[29]

The Commission can only meet this direction, coupled with the requirements of §399.15, if, in fact, it does adopt a procurement expenditure limitation that reflects the value of the renewable procurement (and accounts for that value in that limitation) as to technology, geographic location, and achievement of diversity for each individual utility. Further, if a utility plans appropriately and in the manner required by statute and the Commission, resource diversity will be the successful outcome of that planning process. CEERT, however, does believe that it is incumbent upon the Commission to ensure that its directions on the contents of each utility's renewable resource plan emphasizes resource diversity. If "extra credit" in the adopted limitation encourages such outcomes, CEERT does not object to that concept.

> ***Question 14.*** *How should the procurement expenditure limitation be applied to the Commission's valuation of individual RPS contracts? The January 24 ALJ's Ruling asks if this "methodology" should calculate a "benchmark limit" on the price of RPS procurement contracts, consider an individual contract as a fraction of "some larger procurement expenditure limitation" or "in the context of the procurement expenditure limitation," or "not be applied to individual RPS procurement contracts at all."*

There is simply no requirement in PU Code §399.15 (c) – (g), and none is cited in this question, that requires the Commission's adopted procurement expenditure limitation (not "methodology") to be applied to value or price individual RPS contracts. The legislative

[29] PU Code §399.11(b).

direction is for the Commission to establish a "limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewable portfolio standard."[30] A reasonable statutory construction of this mandate is that each IOU will have a cost limitation or ceiling on its total procurement expenditures to comply with the RPS.

This interpretation is borne out by PU Code §399.15 (f), which refers to the "cost limitation" in terms of "the projected costs" of the IOU "meeting" its RPS requirements and allowing the IOU to "refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation." The bases on which the Commission is to rely in establishing this limitation do not provide, and are not suggested to provide, the basis for establishing a "price benchmark" on which to approve, reject, or calculate the price for a specific RPS project.

Such an approach would also inappropriately inject the Commission into "micromanaging" utility renewable procurement, a job that the Commission has specifically rejected in favor of each utility being "ultimately responsible for achieving successful procurement using its Plan."[31] Thus, it is the utility's job to ensure that it can meet the 33% RPS requirement without exceeding its adopted limitation. The Commission's role in reviewing and approving individual RPS contracts is to consider each project's merits and determine its compliance with established rules governing that procurement, especially those intended to benefit ratepayers (i.e., portfolio content categories). The procurement expenditure limitation or any "methodology" to establish that limitation does not play a role in that review other than to determine whether a utility's expenditure for that procurement causes it to exceed its limitation.

[30] PU Code §399.15(c).
[31] D.11-04-030, at p. 11.

B. Questions 2, 3, 4, 5, 9, 10, and 15: *Review, Revision, and Monitoring of the Procurement Expenditure Limitation Established for Each Electrical Corporation.*

These questions, including Question 2 (which relies on language incorrectly cited to Section 399.15 (c)(2)), relate to subparts of Section 399.15 that do not prescribe what the Commission is to "rely on" in "establishing this limitation" for each utility (subpart (c), addressed above), but rather provide direction or criteria for the Commission's review, revision, and monitoring of that limitation (subparts (d) – (g)). For that reason, these questions have been grouped together here accordingly.

> **Question 2**. *The January 24 ALJ's Ruling posits this question as being one that relates to Section 399.15(c)(2), but in fact the language quoted is from Section 399.15(d)(2), a distinction with a difference. In making this error, this question asks whether '"the costs of all procurement credited toward achieving the renewables portfolio standard" should count towards the procurement expenditure limitation."*[32] *It then proceeds to ask what types of procurement should be included in this requirement, identification of all "costs" that are implicated by this requirement, how the "statutory characterization" of these costs should be interpreted, and how RPS procurement costs incurred prior to the implementation of the procurement expenditure limitation or procurement costs from utility-owned generation should be addressed in the procurement expenditure limitation methodology.*

Unfortunately, this question has not only incorrectly cited the language at issue, but, by doing so, has incorrectly tied it to the wrong exercise. The language at issue arises in the context of PU Code §399.15*(d)*, not (c). This is a distinction with a difference. The question proceeds to assume that the "costs of all procurement credited toward achieving the renewable portfolio standard" are to be separately calculated and accounted for in the Commission establishing the procurement expenditure limitation. This is not the case.

Instead, PU Code §399.15(d) lists certain items that the Commission should ensure that the limitation adopted pursuant to subpart (c) accounts for. This instruction does not change the way in which the Commission is to calculate the limitation, but, rather, "[i]n developing" that limitation, the Commission is to "ensure" that it has been "set at a level that prevents

[32] January 24 ALJ's Ruling, at p. 4.

disproportionate rate impacts," has counted the costs of all procurement credited toward achieving the RPS, and does not include certain "procurement expenditures."[33] From CEERT's perspective, subpart (d) describes an after-the-fact "true up" of the limitation established pursuant to subpart (c) prior to its final adoption . Thus, subpart (d) does not dictate the "types of procurement" that are to be included in establishing the limitation; those instructions are contained in subpart (c).

In this regard, while CEERT believes that the list of eligible procurement mechanisms included in Question 2 are certainly a means of a utility complying with its RPS requirements, the starting point for determining the limitation must be the utility's own "recent renewable resource procurement plan" and projected costs of developing renewable resources, including any consideration of the costs of cancelation or delay. The Commission can certainly verify whether the utility's plan has correctly identified its use or planned use of any of the listed procurement mechanisms, but establishing the limitation does not start with a review of these programs first. Their existence should also not be a means of artificially lowering a cost limitation or limiting diversity if it is not part of the utility's specific and "most recent" plan for procuring RPS-eligible resources.

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

Please see CEERT's answers to Question 6 (Section A) and Question 4 and 9 below. Given that the limitation is to be established with reference to the utility's "most recent renewable energy procurement plan," the submission of which occurs on an "annual" basis, the limitation cannot be established over a long term forecast period (i.e., 8 years) as is the case for long term procurement planning. For this reason, and consistent with a reasonable statutory

[33] PU Code §399.15(d)(1) – (3).

construction of PU Code §399.15(c), as CEERT has previously recommended, a procurement expenditure "limitation" should be established for each utility at the beginning of each compliance period. The starting reference point should be the "most recent renewable energy procurement plan" filed by each utility at the beginning of each period. This approach, with reference to that plan, will allow the Commission the flexibility to revise the "limitation" three times during the overall period of 2011 to 2020 consistent with updated expectations for procurement costs, cancellations or delays, plans, and market conditions.

As addressed in answer to Question 9 below, CEERT does not believe that PU Code §399.15(e)(1) prevents this approach. If, however, the Commission interprets the language of that provision in such a manner, it at least permits the calculation or revision of the cost limitation at least twice in the period between 2011 to 2020.

Question 4. *Should the procurement expenditure limitation methodology provide a limitation for a different time period or set of time periods? This question identifies those periods as including annually, each compliance period, 2011-2015 and 2016-2020, the year 2020, since 2003, or some other period.*

CEERT incorporates its answers to Questions 6 (Section A) and 3 above. A cost limitation for each utility should be adopted at the beginning of each compliance period and remain in place for that time period (2011-2013, 2014-2016, 2017-2020). An annual limitation is too short to reflect planned procurement and would be burdensome to calculate for each year. The three compliance periods, especially with reliance on the "most recent renewable energy procurement plan" for the utility offered at the outset of each period, will allow a reasonable, periodic adjustment and needed flexibility in establishing the limitation.

Question 5. *Since RPS procurement obligations continue indefinitely, how should the procurement expenditure limitation methodology treat RPS procurement in the years after 2020?*

CEERT believes that this question is premature. The immediate focus should be placed, as a first order of business, on establishing procurement expenditure limitations that are appropriate to each RPS-obligated utility meeting the 33% by 2020 target.

Question 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? The January 24 ALJ's Ruling identifies these time periods as annual, at the beginning of each compliance period' once for the period of 2011-2015 and once for 2016-2020, once for 2011-2020, once for the year 2020, once for the entire time since 2003, or some other time period.*

Consistent with CEERT's answers in Questions 6, Section A, and Questions 3- 5 above, it is CEERT's position that the a cost limitation for each utility should be adopted at the beginning of each compliance period and remain in place for that time period (2011-2013, 2014-2016, 2017-2020). As previously noted, a reasonable statutory construction of Section 399.15 (c) demonstrates that the Legislature has directed the Commission is to establish a cost limitation specific to each utility based on its own renewable energy resource plan, an assessment of renewable development costs, and a projection of delay or cancellation of a utility's planned resource additions. Establishing this limitation by compliance period provides needed flexibility and offers a reasonable, periodic update and opportunity to refine each utility's limitations based on the "most recent renewable energy procurement plan" filed at the start of that period.

CEERT does note that PU Code §399.15(e)(1) requires a report to the Legislature by the Commission "no later than January 1, 2016 … assessing whether each electrical corporation can achieve a 33-percent renewables portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations." This provision further states that "[i]f the commission determines that it is necessary to change the limitation for procurement costs" after

that date, it can propose a revised cap to take effect no earlier than January 1, 2017." CEERT acknowledges that this language could be read as limiting any change in the cost limitation to only once in the period 2011 to 2020. However, taking the directions of Section 399.15 as a whole, CEERT does not believe that this language prevents the Commission from having adopted a limitation for each utility at the beginning of each compliance period. The assessment required in 2016 simply provides another basis on which to revise the limitation beginning in 2017. If the Commission construes this statute in a more limited fashion, it should at least be read to permit a cost limitation to be established at least twice during the period 2011 to 2020.

Question 10. *How often should the procurement expenditure limitation be calculated for the years after 2020, using the methodology and inputs that the Commission will adopt?*

For the same reasons as stated in answer to Question 5 above, CEERT believes that this question is premature and will distract from the task at hand. It is important first to adopt "methodology and inputs" that will realistically forecast the costs of each utility procuring renewable energy to meet the 33% goal in each compliance period from 2011 to 2020, consistent with their geographic location, system and customer needs, and applicable portfolio content category restrictions.

Question 15. *Should the procurement expenditure limitation methodology include a methodology by which Energy Division staff could "monitor the status of the cost limitation for each electrical corporation," as required by Section 399.15(g)(1)? The January 24 ALJ's Ruling asks what "elements" would be required in order to monitor this status and how often should it be examined.*

CEERT believes that the most immediate tool available to the Commission in "monitoring" the status of the cost limitation is the utility's annually filed RPS procurement plan. The Commission can and should require that this annual plan include a utility's assessment and quantification of its RPS procurement expenditures relative to its cost limitation. That is, each utility's RPS plan should include a statement of its cost limitation, the RPS procurement

costs it has counted toward that limitation, and, if the utility has reached or expects to exceed that limitation during the planning horizon (annual), the reasons why that has or may occur.

III.
CONCLUSION

CEERT appreciates the opportunity to offer its opening comments on the implementation of the SB 2 (1x) procurement expenditure limitations. CEERT urges the Commission to implement these statutory provisions consistent with established principles of statutory construction and the specific language of these provisions coupled with the overall intent and purpose of the RPS Program law as recommended herein.

Respectfully submitted,

February 16, 2012

/s/ SARA STECK MYERS

Sara Steck Myers
Attorney for CEERT

122 – 28th Avenue
San Francisco, CA 94121
Telephone: (415) 387-1904
Facsimile: (415) 387-4708
E-mail: ssmyers@att.net

VERIFICATION

(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Comments of the Center for Energy Efficiency and Renewable Technologies on RPS Procurement Expenditure Limitations, have been prepared and read by me and 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.

I declare under penalty of perjury that the foregoing is true and correct and executed on February 16, 2012, at San Francisco, California.

Respectfully submitted,

/s/ SARA STECK MYERS

Sara Steck Myers
Attorney at Law
122 – 28th Avenue
San Francisco, CA 94121
(415) 387-1904
(415) 387-4708 (FAX)
ssmyers@att.net

Attorney for the
Center for Energy Efficiency and Renewable Technologies