

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program

Rulemaking 11-05-005
(Filed May 5, 2011)

**REPLY COMMENTS OF THE ENERGY PRODUCERS AND USERS
COALITION, THE CALIFORNIA LARGE ENERGY CONSUMERS
ASSOCIATION AND THE CALIFORNIA MANUFACTURERS ASSOCIATION
ON THE 33% RPS PROCUREMENT EXPENDITURE LIMITATIONS**

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**BEFORE THE PUBLIC UTILITIES COMMISSION
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Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.

Rulemaking 11-10-003
(Filed October 6, 2011)

**REPLY COMMENTS OF THE ENERGY PRODUCERS AND USERS
COALITION, THE CALIFORNIA LARGE ENERGY CONSUMERS
ASSOCIATION AND THE CALIFORNIA MANUFACTURERS ASSOCIATION
ON THE 33% RPS PROCUREMENT EXPENDITURE LIMITATIONS**

These reply comments are submitted pursuant to the Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard (RPS) Program (ALJ Ruling), dated January 24, 2012. The California Large Energy Consumers Association¹ (CLECA), the Energy Producers and Users Coalition² (EPUC) and the California Manufacturers and Technology Association³ (CMTA) jointly submit these comments. CMTA filed a motion for party status on February 23, 2012.

I. INTRODUCTION

The competing tensions between achieving a 33% RPS and protecting ratepayers from disproportionate rate impacts are readily apparent in the parties'

¹ CLECA is an ad hoc organization of large, high load factor industrial electric customers of Southern California Edison Company and Pacific Gas and Electric Company. CLECA has been an active participant in Commission regulatory proceedings since 1987.

² EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, and Occidental of Elk Hills, Inc.

³ CMTA works to improve and enhance a strong business climate for California's manufacturing, processing and technology based companies. Since 1918, CMTA has worked with state government to develop balanced laws, effective regulations and sound public policies to stimulate economic growth and create new jobs while safeguarding the state's environmental resources. CMTA represents businesses from the entire manufacturing community.

opening comments.⁴ The Legislature that drafted and passed SB 2 (1X) recognized that the goal is not, and should not be, a 33% RPS at any cost. Rather, the goal of a 33% RPS is limited to what can be achieved without disproportionate rate impacts.⁵ The Legislature did not want ratepayers to pay too much for a 33% RPS. If rate impacts of RPS procurement are disproportionate, unless additional procurement can be undertaken with only a “*de minimis*” rate increase, there is an off-ramp; investor owned utilities are excused from further RPS procurement.⁶

Southern California Edison Company rightly states that the long term success of the RPS depends on public acceptance.⁷ Yet of the twenty-one parties that filed opening comments on cost containment, only a few, such as CLECA/EPUC/CMTA, SCE and PG&E, sought clear implementation of the law’s off-ramp from a 33% RPS.⁸ Most parties’ comments focused more on achieving a 33% RPS and avoiding “*setting a cap that is unreasonably low*”⁹ than on

⁴ The ALJ Ruling specifically focuses only on the role of the limitation and a compliance framework; it “*does not seek quantitative proposals or models for such a [cost containment] methodology.*” As noted in our Opening Comments, the deferral of the foundational questions of what a disproportionate rate impact would be, albeit in anticipation of an Energy Division staff proposal and workshop, hampers our ability to respond fully both to some of the questions and to other parties’ positions.

⁵ P.U. Code §399.15(d)(1) (mandating that the Commission set “*the limitation ... at a level that prevents disproportionate rate impacts.*”).

⁶ P.U. Code §399.15(f) (“*If the cost limitation for an electrical corporation is insufficient to support the projected costs of meeting the [RPS] requirements, the electrical corporation may refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation, unless eligible renewable energy resources can be procured without exceeding a de minimis increase in rates, consistent with the long-term procurement plan established for electrical corporation pursuant to Section 454.5.*”).

⁷ SCE Opening Comments, at 2.

⁸ See, e.g., PG&E Opening Comments, at 2; see also SCE Opening Comments, at 3.

⁹ See SDG&E Opening Comments, at 3; see also TURN Opening Comments, at 11 (noting that frequent updates to the Commission should enable action “*at any point if it determines that the limitation may be prematurely exhausted*”). It is not clear what is meant by “premature exhaustion” of the limitation: if disproportionate rate impacts result from a 22% RPS, would that be considered “premature”? We respectfully suggest that TURN is not considering the cost

protecting ratepayers from disproportionate rate impacts. The Commission must ensure that this present bias towards a 33% RPS does not lead to an imbalanced, ineffective cost limitation. Consideration of ratepayer impacts cannot be subordinated by the goal of a 33% RPS. Ratepayer impacts must be kept front and center in the development and deployment of the cost limitations, which must actually guard against disproportionate rate impacts or risk ratepayer revolt.

Finally, the Commission, staff and parties must determine what “disproportionate” means in order to develop the methodology and limits, and to put parties’ responses in the context of the statutory goal of the limit. The goal of the limit is to prevent disproportionate rate impacts; we suggested that the 33% RPS be compared to procurement under a 20% RPS, including non-renewable resources, to determine proportionality.¹⁰ IEP, Sierra Club and CalWEA had similar suggestions.¹¹ We note that some of our positions may change as the modeling methodology addressing the resource needs and related costs associated with 33% RPS vs. other resource scenarios is further developed; however, our focus on ensuring that the protections for ratepayers are given full force and effect will not change.

Within this context, these reply comments respond to the opening comments of the following parties: the California Wind Energy Association

limitation properly; the focus should be on the rate impacts only, not the timing of the rate impacts. If the impacts are disproportionate, regardless of where the utilities are in terms of complying with the RPS, they must be able, and indeed encouraged, to use the off-ramp provided by the law to stop procuring RPS power.

¹⁰ CLECA/EPUC/CMTA Opening Comments, at 4, footnote 8.

¹¹ IEP Opening Comments, at 15; CalWEA Opening Comments, at 13-15; Sierra Club Opening Comments, at 6.

(CalWEA), the Center for Energy Efficiency and Renewable Technologies (CEERT), the Division of Ratepayer Advocates (DRA), the Independent Energy Producers Association (IEP), the Green Power Institute (GPI), the Large-Scale Solar Association (LSA), Pacific Gas & Electric Company (PG&E), the Sierra Club, SCE, San Diego Gas & Electric Company, The Utility Reform Network (TURN), and the Union of Concerned Scientists (UCS).¹²

II. REPLY

These reply comments make three points. First, for the cost limitation to work, utilities must stop procuring renewable resources if the RPS becomes too costly and would lead to disproportionate rate impacts. Second, questions on mechanics, such as how a single limitation for the entire period could prevent disproportionate rate impacts, must be carefully considered and answered. Third, all suggestions that favor ratepayer protections should be adopted and included in the cost limitations and implementation. For example, the cost limitation methodology should incorporate DRA's suggestion that *either* delays and cancellations be taken into consideration *or* a minimum overprocurement amount be included.¹³ Use of both would be inappropriate and could lead to costly overprocurement.

A. For the Cost Limitation to Work, It Must Impact Procurement.

The demonstrated bias of some parties to achieving a 33% RPS, with almost no regard for cost, is alarming, and, in some instances, surprising. GPI

¹² Silence on any other points made in opening comments should not be taken as support.
¹³ DRA Opening Comments, at 12.

worries the limitation may arbitrarily excuse utilities from complying with the RPS;¹⁴ SDG&E states plainly that the cap should not be set “*unreasonably low*.”¹⁵ LSA warns against setting an “*artificial barrier*” against procuring renewables above a 33% RPS. DRA cautions that the Commission must monitor *and increase* the cost limitation if necessary.¹⁶ Notably, the statute does not say “increase”; rather, it uses the term “change.”¹⁷ The Commission and parties should acknowledge that a changed cost limitation could be a decrease, should circumstances warrant it.

More importantly, the cost limitation and its development must maintain a clear focus on ratepayer interests and actually impact ongoing procurement for it to serve its statutory purpose. This mechanism was included in the 33% RPS statute to ensure prevention of disproportionate ratepayer impacts.¹⁸ The ratepayer impacts of the 33% RPS cannot be subsumed by a focus on achieving the 33% RPS, even given the multiple benefits of renewable resources. CEERT and UCS, among others, however, posit that the cost limitations should not impact approval of individual contracts.¹⁹ *How will the cost limitations*

¹⁴ See GPI Opening Comments, at 2.

¹⁵ SDG&E Opening Comments, at 3.

¹⁶ See DRA Opening Comments, at 5. Perhaps DRA and similar parties are less concerned about ratepayer impacts than they otherwise might be if all residential ratepayer load were at risk for increased rates from a 33% RPS; currently about two-thirds of all residential load is protected from such increases in rates. See, generally, SB 695.

¹⁷ See P.U. Code §399.15(e)(1) (“If the commission determines it is necessary **to change** the limitation for procurement costs ... it may propose **a revised cap**”)(emphasis added).

¹⁸ See P.U. Code §399.15(d)(1) (obligating this Commission to ensure that the level of limitation is set such that it “prevents disproportionate rate impacts”); see also P.U. Code §399.15 (f) (excusing utilities from additional RPS procurement once the limitation is hit, unless they can do with only a de minimis rate impact).

¹⁹ See CEERT Opening Comments at 18-19; see also UCS Opening Comments, at 10; see also TURN Opening Comments, at 10 (appearing to take the position that the limitation should not impact actual contract approval and it should not be used “for determining the reasonableness of the pricing of any particular procurement contract”).

meaningfully control costs and prevent disproportionate rate impacts if the limitations do not impact actual procurement? For the limitations to work, they must enable the utilities to stop procurement before the 33% RPS costs exceed reasonable limits.

Thus the PG&E and SCE positions that (1) the cost limitation must impact procurement, (2) the Commission should waive compliance if the cost limitation is hit and (3) the utilities should slow procurement as they approach the cost limitation²⁰ should be adopted. DRA's apparent concern that utilities may slow procurement if they near the limit²¹ is misplaced; such slowing of procurement is exactly what should happen under SB 2 (1X). Otherwise, the cost limitation, regardless of its level, will not stop "*disproportionate rate impacts*" – and the Commission will have failed to meet the Legislature's charge: ensuring that the cost limitation will prevent disproportionate rate impacts.²²

To this end, the Commission should adopt the DRA and PG&E proposals to identify in each Advice Letter the impact of a particular contract on the utility's compliance obligation and the cost limitation. Additionally, SCE's "stoplight" proposal, with green, yellow and red signals for RPS procurement may be useful, depending on the mechanism ultimately developed and so long as the yellow and red signals actually serve to slow and stop procurement.

²⁰ See generally, PG&E Opening Comments, at 2; see also, SCE Opening Comments.

²¹ DRA Opening Comments, at 5-6.

²² P.U. Code §399.15(f).

B. Questions on Mechanics Need Careful Consideration.

1. How Could A Single Limit Prevent Undue Rate Impacts?

Several parties suggested the cost limitation be a single limit for the entire period.²³ At best, it is unclear how a single limit would actually work to control costs. At worst, a single limit for the entire period would fail utterly to restrain costs and prevent disproportionate rate impacts. Perhaps additional detail on how the mechanics would work would help. Regardless, the Commission should realize that it cannot leave the question of whether rate impacts are disproportionate to 2020. As GPI appropriately recognizes, the limitations should “*monitor and guide the RPS procurement activities ... on an ongoing basis of some kind in order for it to be able to have any usefulness.*”²⁴

PG&E also suggests using the levelized cost of energy (LCOE) in the single cost limitation.²⁵ This may be inappropriate and could risk early disproportionate rate impacts. Use of LCOE would fail to reflect the higher capital costs recovered in rates in the first years of a facility’s operation. Rates do not recover the costs of utility generation on an LCOE basis; that is not how rates work, so that is not how costs should be characterized for purposes of assessing ratepayer impacts.

2. What Should the Comparison for the 33% RPS Be?

The ALJ Ruling sought input on the framework for the cost limitation, deferring key, foundational questions such as what comparison would be used to

²³ See, e.g., SCE Opening Comments, at 3 (urging use of one limitation for the entire period); see also Sierra Club Opening Comments, at 4 (“*there should be one cumulative procurement expenditure limitation through 2020.*”); see also PG&E Opening Comments, at 8-9.

²⁴ GPI Opening Comments, at 3 (emphasis added).

²⁵ PG&E Opening Comments, at 5; see also Sierra Club Opening Comments, at 14.

determine disproportionate impacts to after the development and distribution of a staff proposal. IEP, Sierra Club and CalWEA, however, suggested a comparison to determine whether rate impacts are disproportionate to the all-gas scenario in the Long Term Procurement Plan in R.10-05-006.²⁶ This is similar in concept to our suggestion of a comparison to a 20% RPS plus additional fossil-fired resources. However, the modeling methodology and assumptions used to determine the resource needs under various 33% RPS scenarios and other possible supply scenarios, including the all-gas case, are still being developed. A CAISO working group process is ongoing, and these scenarios are expected to be the subject of the next LTPP proceeding.²⁷ Accordingly, it is not clear whether the use of this scenario, pulled from another docket and undergoing adjustment, would be appropriate. It may, nevertheless, serve as a starting place for development of a suitable comparison. Regardless, the issue of cost containment for the RPS should not be punted to the LTPP, as suggested by CalWEA; that would risk this critical issue being lost in a myriad of other, unrelated issues and, given the LTPP's track record, not being resolved or addressed at all.

²⁶ IEP Opening Comments, at 5-7; see also CalWEA Opening Comments, at 13-15; see also Sierra Club Opening Comments, at 6 (recommending use of a modified, updated scenario from LTPP).

²⁷ See, e.g., <http://www.caiso.com/Documents/Renewables%20integration%20study%20results> (showing the status of on-going modeling efforts). The August 3, 2011 settlement in R. 10-05-006, pending adoption in a recent Phase 1 and 3 PD, proposes that this additional information be addressed in the next LTPP case.

3. How Would DRA's Monthly Bill Impact Work?

DRA suggests using a monthly bill impact for customers as a way to gauge and prevent disproportionate rate impacts.²⁸ It must be remembered that residential rate design constraints protect roughly 2/3 of their usage from the rate increases that 33% RPS would cause. Furthermore, how would this work? Would there be different levels of "acceptable" bill impacts for the different customer classes? This seems overly complex and unwieldy; SCE's proposed basis for the limitation, "*on the increase in the renewable generation rate component,*"²⁹ is preferable.

C. The Commission Should Adopt Suggestions that Will Protect Ratepayers from Undue Impacts.

As a preliminary matter, the Commission should adopt SCE's suggestion to consider and limit the increase in the renewables component of the generation.³⁰ Even with no knowledge of what the cost limitations or methodologies may be, this seems reasonable. The Commission should also be guided in its definition of "de minimis" by the statute's definition of de minimis. P.U. Code §399.12(h)(3)(a), sets "*the de minimis quantity of non-renewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel*" and permits a potential increase for an individual facility to "*a maximum of 5%.*"

Moreover, the Commission should adopt DRA's position that new transmission should be included in the 33% RPS costs as distinct from

²⁸ DRA Opening Comments, at 1-2.

²⁹ SCE Opening Comments, at 3.

³⁰ See SCE Opening Comments, at 3.

“transmission upgrades”, which are not to be included.³¹ Finally, as described above, DRA recommends that in the methodology, consideration be given *either* to delays and cancellations *or* to a margin for overprocurement, but not both; this is a good idea and would serve to protect ratepayers from disproportionate rate impacts. It too should be adopted.

III. CONCLUSION

The cost limitations are intended to prevent the 33% RPS from resulting in disproportionate rate impacts. The development of this methodology, and ensuring its ultimate effectiveness, are critically important to ratepayers concerned by the potential costs of a 33% RPS. It should be critically important to this Commission as well.

Respectfully submitted,



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Evelyn Kahl

Counsel to the Energy Producers and
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/S/

Dorothy Rothrock
Sr. VP, Government Relations

For the California Manufacturers and
Technology Association

March 1, 2012

³¹ DRA Opening Comments, at 12.

VERIFICATION

I am an attorney for the California Large Energy Consumers Association in this matter. CLECA is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of CLECA for that reason. I have prepared and read the attached "**REPLY COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION, THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND THE CALIFORNIA MANUFACTURERS ASSOCIATION ON THE 33% RPS PROCUREMENT EXPENDITURE LIMITATIONS**," dated March 1, 2012. I am informed and believe that the matters stated in this document are true.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 1, 2012 at San Francisco, California.

A handwritten signature in cursive script that reads "Nora Sheriff".

Nora Sheriff
Counsel to the California
Large Energy Consumers
Association

VERIFICATION

I am the Senior Vice President for the California Manufacturers and Technology Association. Under Rule 1.11 of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of CMTA. I have read the attached "**REPLY COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION, THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND THE CALIFORNIA MANUFACTURERS ASSOCIATION ON THE 33% RPS PROCUREMENT EXPENDITURE LIMITATIONS**," dated March 1, 2012. I am informed and believe, and on those grounds allege, that the matters stated in this document are true.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 1, 2012 at Sacramento, CA.

/s/

Dorothy Rothrock
Sr. VP, Government Relations
California Manufacturers and
Technology Association

VERIFICATION

I am the attorney for the Energy Producers and Users Coalition (EPUC) in this matter. EPUC is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of EPUC for that reason. I have read the attached **"REPLY COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION, THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND THE CALIFORNIA MANUFACTURERS ASSOCIATION ON THE 33% RPS PROCUREMENT EXPENDITURE LIMITATIONS,"** dated March 1, 2012. I am informed and believe, and on those grounds allege, that the matters stated in this document are true.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 1, 2012 at San Francisco, California.

A handwritten signature in cursive script that reads "Evelyn Kahl".

Evelyn Kahl
Counsel to the Energy Producers
and Users Coalition