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

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

March 1, 2012

Gregory Morris, Director
Vennessia Whiddon, Associate
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

REPLY 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 *Reply Comments on RPS Expenditure Limitations*, which address the responses by other parties to the questions posed in the *Ruling*.

Cost Control, not Excuse from Procurement

Our major concern about the use of the expenditure limitation specified in new Public Utility Code § 399.15 is that it not be used as a means to excuse the utilities from their obligations to procure renewable energy. Unless the IOUs believe that these obligations, which are detailed in SB 2 (1X), and Decisions D.11-12-020 and D.11-12-052, will be vigorously enforced, we believe that it is unlikely that they will meet their obligations.

The purpose of the expenditure limitations is to prevent overspending on the part of the utilities on achievement of the RPS program goals, not to prevent the achievement of the program goals. In their *Opening Comments*, several of the parties, including the utilities, expressed an expectation that the expenditure limitations could be used to slow down, limit, or prevent utility RPS procurement, in contravention to the established programmatic procurement obligations. This is not the purpose to which the expenditure limitations were meant to be put.

Procurement and Over Procurement

In the opinion of the GPI, one of the major issues that has hampered the achievement of the state's RPS goals over the past decade has been the failure to distinguish between the procurement of RPS PPAs, and the procurement of RPS energy. The development of renewable generating projects in California is a risky business, and a long record of experience demonstrates that some projects holding PPAs will experience delays and failures to achieve full operational status. We are encouraged, therefore, that SB 2 (1X), in § 399.15(c)(3), recognizes and acknowledges that utilities have to procure more energy in the form of PPAs for new facilities than the amount of energy that is required for RPS compliance, if compliance is to be achieved. In our February 16 *Comments*, we suggested that an over-contracting margin of 30 percent should be used for projects utilizing commercially-proven technologies, and higher values for projects using technology that is in the process of early commercialization.

Given that the new law explicitly recognizes the need to over-contract for energy from new facilities in order to achieve programmatic mandates, it would be ironic indeed if this statutorily-recognized need was used in ways that would prevent the utilities from contracting with an adequate margin needed to achieve compliance, or would penalize a utility for exceeding their compliance obligations in the event that a greater-than-expected amount of their contracted-for RPS energy comes on-line. Hence, we take exception to AReM's claim that a minimum margin of contracting above the mandated procurement amount is nothing more that the setting of a higher minimum. The procurement mandate is based on delivered energy, not contracted-for energy, and using a contracting margin does not change the mandate in any way.

DRA offers an alternative approach to accounting for the necessity to over-contract in order to achieve targets that is worth further consideration. Their proposal is to base the expenditure limitation on its ultimate bill impact, either on a percentage or a dollar basis. More generally, this approach would involve setting the limitation on the basis of a per-MWh delivered amount, rather than a consolidated amount. Thus, the costs would be confined to those actually incurred, and there would be no penalty if a utility that contracts with an adequate margin is fortunate enough to actually receive more than the mandated amount of qualifying RPS energy.

Costs to Include

SB 2 (1X) is specific about what costs to include in the RPS expenditure limitations. Several of the parties, including the utilities, suggest adding costs that are outside of those specified in § 399.15(d)(3), such as the costs of renewables integration. Our position is that only those costs explicitly specified by the statute should be included in the expenditure limitations.

Several of the parties suggest including the costs of all PPAs in a utility's portfolio, based on assumed costs, for the lifetime of the contracts. This would only work if the expenditure limitation is set at a level that is, for example, 30 percent greater than the cost that is judged reasonable to expend on renewable procurement in order to achieve mandates (assuming the GPI's recommended 30-percent contracting margin is used). If the costs of PPAs-in-development are to be included in the calculation of RPS procurement costs, the mathematically-preferred approach would be to suitably discount the cost of each contract, based on the probability of project success.

In our February 16 *Comments*, we argued that only actual expenditures for renewable procurement should be included in the determination of whether a utility has exceeded its expenditure limitation. We continue to believe that. The expenditure limitation, which is essentially a budget, and the later determination of actual expenditures, should be for whatever time period the budget covers (see below, Time Period for Limitation). The fact that many of the generators who provide qualifying energy have years left on their PPAs beyond the end of the defined time period does not mean that those costs that are beyond the defined time period should be included in the budget, or the later determination of costs. To do so would mean including estimated costs in the ultimate determination of expenditures compared to budget, which can only lead to conflict.

Time Period for Limitation

In our February 16, 2012, *Comments*, the GPI suggested that RPS compliance-period limitations should be developed for the utilities. Several parties, including SCE and PG&E, argue for the use of a single expenditure limitation for each utility, covering the ten-year period 2011 – 2012. We find the reasoning behind a single, ten-year expenditure limitation to be compelling, and so we are changing our position on this matter.

By determining a single expenditure limitation for a utility over the duration of the current phase (2011 – 2020) of the state's RPS program, which presumably would be based on an annual analysis of what is needed for each utility to comply with its procurement obligations, the utilities will be given maximum flexibility to meet their obligations over the course of the period during which they have to achieve rapid renewables growth in order to reach the 33-percent renewables level (SCE notes that the utilities have to go from 20 percent to 33 percent during this period, whereas in fact none of the IOUs were even at 20 percent as of 2011, and the task is therefore that much more challenging). Similarly, the Commission would be able to easily monitor the utilities' procurement performance, and adjust the expenditure limitation as necessary, fully consistent with the statutory language that is included in SB 2 (1X).

Dated March 1, 2012

Respectfully Submitted,

Gregg Morris

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

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 *Reply 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 March 1, 2012, at Berkeley, California.

Gregg Morris

Gregory Morris