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

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Reply Comments on Procurement Expenditure Limitations for the Renewable Portfolio Standard (RPS) Program pursuant to Senate Bill (SB) 2 (1x) (Simitian).[1] These Reply 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. CERTAIN COMMENTS UNDERSCORE THE NEED FOR THE COMMISSION TO CLEARLY IDENTIFY THE TASK AT HAND CONSISTENT WITH THE APPLICABLE STATUTORY LANGUAGE AND ITS PURPOSE AND CONTEXT.

In its Opening Comments, CEERT stressed the need for the Commission, as it did in Decision (D.) 11-12-052, to implement the new SB 2 (1x) provisions governing the RPS Program "guided by the basic principles of statutory construction," including, but not limited to, giving words used in a statute a plain and common sense meaning consistent with the statute's legislative purpose and in context.[2] This required approach is especially critical to avoid a

[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; CEERT Opening Comments, at pp. 1-5.

piecemeal and inappropriate construction of portions of an overall statutory program (RPS Program (PU Code §399.11, et seq.)) that are being implemented separately.[3]

With respect to the provisions at issue here – Public Utilities (PU) Code §399.15 (c)-(g) – CEERT, among other things, expressed concern in its Opening Comments that the manner and order of the questions posed by the January 24 ALJ's Ruling might not elicit or result in a "reasonable" statutory construction of these provisions.[4] Specifically, the questions, as identified and sequenced in the January 24 ALJ's Ruling, had the effect of making the three drivers or "data points,"[5] on which the Commission is to rely in "establishing" the RPS procurement expenditure limitations, secondary considerations, while, conversely, making other provisions, which, at most, might be considered after-the-fact "true-ups" of that calculation, primary considerations.[6]

Yet, the *first* statutory direction in PU Code §399.15 (c) – (g) in terms of the Commission actually "establishing" a limitation is that (1) the "[C]omission shall 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" and (2) *"[i]n establishing this limitation*, the [C]omission shall *rely* on" three specific sources of information: the "most recent renewable energy procurement plan," "procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources," and "the potential that some planned resource additions may be delayed or canceled."[7] By the questions failing to make clear that these instructions are the starting point for the Commission to establish a limitation for each investor owned utility (IOU), the result has been comments that have

[3] CEERT Opening Comments, at p. 2.
[4] D.11-12-052, at p. 7.
[5] Union of Concerned Scientists (UCS) Opening Comments, at p. 6.
[6] CEERT Opening Comments, at pp. 1-6.
[7] PU Code §399.15(c) and (c)(1) – (3); emphasis added.

provided widely diverging approaches and have even proposed mechanisms to calculate this limitation without regard to how this task is to be accomplished, according to applicable statute, in the first place. While these ideas, which range from "a predetermined bill impact"[8] to a "methodology" based on a "*but for* the procurement of RPS resources" evaluation,[9] may have merit, they are premature and distract from the Commission's first responsibility to "establish" the limitation in the manner required by PU Code §399.15(c).

This failure to adequately tie the questions posed for comment to the precise language of the statute has also opened the door for comments that either challenge the merits of expending ratepayer dollars for renewables in the first instance or that offer recommendations that could relieve an IOU from achieving the 33% RPS procurement mandate at all. In particular, the Opening Comments filed by Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) offer a "vision" of the Commission's implementation of §399.15 (c) – (g) that focuses less, if at all, on how the procurement expenditure limitation is to be "established" in the first instance, and more on what costs can "count" towards the limitation and how, if it is reached, the limitation, fixed for 10 years, can relieve the utilities' of their obligation to meet a 33% RPS by 2020.

SCE's Comments, in fact, offer little insight as to the data points required by Section 399.15(c) for "establishing this limitation," but instead focus its primary recommendations on asking the Commission to adopt "a single limitation for each IOU for the time period 2011 through 2020"[10] that would not be changed except for procurement "*after* 2020"[11] and that

[8] Division of Ratepayer Advocates (DRA), at p. 1.
[9] Independent Energy Producers Association (IEP), at p. 5.
[10] SCE Comments, at p. 9; see also, p. 4.
[11] SCE Comments, at p. 9; emphasis added.

would serve to allow IOUs to "stop procuring once their limitations are reached."[12] SCE's Comments seem to acknowledge that establishing the limitation in the first place will be "forecasting" exercise that will require "true-ups," but reserves any such "true-ups" or revisions, not to revising or correcting the limitation, but only to revising the costs *counted toward* the limitation.[13]

Similarly, PG&E advocates for one limitation that "applies to the period 2011 through 2020" and for "true-ups" or "updates" to be limited to "costs" credited to the limitation and not to establishing or changing the limitation itself.[14] PG&E, unlike SCE, however, does admit that §399.15 permits "potential revision of the cap," but asserts that a single limitation "promotes regulatory certainty" on which "IOUs can rely for procurement planning and decisions" and should not be revisited other than once, for limited purposes, in 2017. PG&E also seeks to limit public inquiry of its planning process (i.e., least cost, best fit analysis) on the grounds that such protocols, even if part and parcel of its RPS plans and solicitations, are "confidential" in nature and "may consider costs" that are not to be included in the limitation.[15]

SCE's and PG&E's Comments confirm the worry expressed by Green Power Institute (GPI) in its Comments. Namely, if their views are adopted, the "cost limitation" will become "a hatchet that excuses a utility from compliance with the statute if costs exceed some arbitrarily-imposed standard," instead of one that will be used as a "tool to monitor and control the utilities' costs of RPS procurement," which can "be readjusted if they prove to be unnecessary or overly restrictive."[16]

[12] SCE Comments, at p. 3.
[13] SCE Comments, at pp. 8-11, 13.
[14] PG&E Comments, at pp. 2, 4-7, 11.
[15] PG&E Comments, at pp. 11, 16.
[16] GPI Opening Comments, at p. 2.

Even more troubling, SCE has used its Comments as a springboard for challenging the costs of renewable procurement generally. In this regard, SCE's Comments inauspiciously begin with the unsupported claims that "California electricity customers are bearing significant costs to support renewable energy," "renewable energy programs are and will continue to place upward pressure on electricity rates."[17] Based on these assertions, SCE concludes as to any adopted cost limitation: "The Commission should recognize the cumulative upward pressure on customer rates as a result o the RPS program and other programs that support renewable energy and adopt a procurement expenditure limitation methodology that will protect customers against unnecessary increases in rates."[18]

These broad, allegations, especially regarding the impact of renewable procurement on rates, are not only unsupported, but false. None account for the impact on rates of utility "revenue requirements" as a whole or the risks and costs to ratepayers and this state of electricity procurement from nuclear or fossil resources, whether non-utility or utility-owned, that is avoided by the procurement of renewable energy.[19]

In fact, the Commission's own PU Code §748 Report to the Governor and Legislature issued in May 2011 (§748 Report) on "actions to limit utility cost and rate increases" confirms that SCE's claims are simply false.[20] In that report, the Commission confirmed that the utilities' *billion* dollar revenue requirements, on which their rates are based, stem from costs associated with "operations and maintenance," "depreciation," and "return on rate base."[21] As to RPS procurement, the §748 Report specifically states that, as of May 2011: "Since ratepayers do not

[17] SCE Opening Comments, at p. 1.
[18] SCE Opening Comments, at p. 1.
[19] Concerns regarding the "seismic" risks and costs to ratepayers and Californians of nuclear generation have only exacerbated in the face of the Fukishima Dai-ichi nuclear power plant crisis (see, e.g., D.12-02-004).
[20] "Public Utilities Code Section 748 Report to the Governor and Legislature on Actions to Limit Utility Cost and Rate Increases " (May 2011), at: http://www.cpuc.ca.gov/NR/rdonlyres/790741E7-EB15-4DE5-A6FA-FE1665394A12/0/SB695CPUCreport2011Final.pdf
[21] Id., at p. 11.

pay for RPS generation until it is actually delivered and since most of the projects resulting from RPS contracts are still in development, the rate impacts of the RPS program are currently *small*."[22] The report further notes that, while half of the projects submitted for Commission approval (but not necessarily approved or delivering energy) had been above the market price referent (MPR), the Commission expected "further improvements in technology or other developments [to] cause average bid prices to decrease," a circumstance confirmed as fact by the Commission's most recent Quarterly RPS Report to the Legislature and even by SCE in its Comments in citing that report.[23]

SCE's and PG&E's Comments underscore the need for the Commission to start its task of establishing a procurement expenditure *limitation* in the manner directed by the Legislature in Section 399.15(c), especially to avoid such unsupported, distracting allegations like those made by SCE that are clearly counter-productive to adopting a limitation that ensures meaningful progress toward the 33% RPS goal. While it might be the Commission's preference to focus this process on a "methodology" first proposed by its Energy Division, CEERT believes that these utility comments and others demonstrate that, as intended by the Legislature, the establishment or adoption of the *limitation* (not a "methodology," a term not used in the statute) is a *fact-based* exercise that must be conducted through an open, public process with hearings, as necessary, in which all stakeholders can participate equally and that must start with the IOUs' RPS procurement plans and the process for considering those plans.

[22] Id., at p. 28; emphasis added.
[23] RPS Quarterly Report (4th Quarter 2011), at pp. 7-8; SCE Comments, at pp. 2-3.

II.
COMMENTS BY UCS, GPI, SIERRA CLUB, TURN, AND SDG&E PROVIDE SALIENT RECOMMENDATIONS THAT REINFORCE THE STATUTORY DIRECTION THAT "ESTABLISHING" A "PROCUREMENT EXPENDITURE *LIMITATION*" STARTS WITH A ROBUST IOU RPS PROCUREMENT PLANNING PROCESS AND ANTICIPATES NEEDED UPDATES.

In its Opening Comments, CEERT focused on the role that the IOUs' "renewable energy procurement plan" plays in the Commission "establishing" an RPS procurement expenditure limitation for each IOU, not only by the terms PU Code §399.15(c)(1), but also as harmonized with other relevant provisions of the RPS Program statute. Specifically, PU Code §399.13, as added by SB 2 (1x), maintains and amplifies on previous instructions to the Commission as to what these "annually" prepared plans are to contain and demonstrates that this planning process is the ideal forum for developing the three "data points" required to establish the procurement expenditure limitation, especially to the extent that the Commission ensures reliance on as much publicly available information as possible. Thus, the plans themselves not only meet the data point identified in §399.15(c)(1) ("recent renewable energy procurement plan"), are now required to specifically assess delay or cancellation of planned RPS-eligible resource additions (PU Code §399.13(a)(5)(F)), the data point identified in §399.15(c)(3), and, by virtue of the Commission's authority under §399.13(a)(1), can be directed to include or serve as a forum to "approximate the expected cost of building, owning, and operating eligible renewable energy resources," the remaining "data point" identified in §399.15(c)(2).

Further, as stated above, using such a process will allow all parties an equal opportunity to weigh in on the information necessary to "establish" the limitation; issue data requests, seek hearings and offer testimony, as needed, to create a record on which the Commission can rely to confirm and verify the adopted *limitation*. This task is simply not appropriate to be left to either a staff methodology offered as a fait accompli or a confidential exchange of information, but

requires an open, public process that will give greater confidence for all stakeholders, from ratepayer advocates to RPS market participants, in the finally adopted limitation, especially to the extent that the Commission limits reliance on "confidential" data in establishing that limitation.

Other parties have similarly identified the value and propriety of focusing on a robust RPS procurement planning process to establish the procurement expenditure *limitation*, recognizing, as noted by the California Wind Energy Association (CalWEA), that establishing that limitation, as directed by statute, is a "fundamentally forward-looking" process.[24] The Union of Concerned Scientists (UCS), like CEERT, specifically references those provisions of Section 399.13, in addition to Section 399.15, that will ensure that "the IOUs' annual RPS procurement plans will provide useful information for developing the RPS procurement expenditure limitation" and for "understanding when actual RPS procurement costs will be incurred," including the risks of RPS project delay or cancellation.[25] In its Comments, The Utility Reform Network (TURN) further identifies the "most important elements" of such RPS plans that will permit "the Commission to develop a realistic assessment of the possible costs that could be incurred to meet the targets for each compliance period."[26]

From GPI's perspective, the annual renewable plans can "guide the budget that is needed for each utility to meet its mandates" and permit the procurement expenditure limitation to "take into account the expected mix of resources and technologies that each utility will utilize to meet their RPS obligations."[27] Sierra Club California (Sierra Club) in its Comments notes the wide range of information that is and also *can be* included in the RPS procurement planning process to

[24] CalWEA Opening Comments, at p. 2.
[25] UCS Opening Comments, at pp. 5-6, 8; see also, TURN Opening Comments, at p. 7.
[26] TURN Opening Comments, at p. 5; see also, p. 8.
[27] GPI Opening Comments, at pp. 4, 6.

establish procurement expenditure limitations.[28] Like CEERT, Sierra Club also points out the necessity to ensure that these plans consider and incorporate other RPS Program requirements, including "procurement content category requirements," especially "when evaluating the contingencies in renewable energy procurement."[29]

These parties, along with San Diego Gas and Electric Company (SDG&E), further recognize the need for flexibility, especially in establishing procurement expenditure limitations in reliance on what are essentially *forecasted* data points. In this regard, GPI has observed 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,"[30] but instead, according to UCS, "should be flexible, to account for the significant uncertain regarding the timing of project development and the actual cost of achieving a 33 percent RPS," [31] including "changing market circumstances."[32] GPI states that the initiation of each subsequent multi-year compliance period is a "logical time" to update and revisit budgets,[33] a view largely shared by SDG&E as one that will "allow for the flexibility needed to reflect changing market conditions," while providing the "certainty needed to inform procurement decision during each compliance period."[34] According to SDG&E, a "time period longer than several years may not reflect market conditions, thereby reducing practical application for procurement decisions."[35]

Finally, many of these parties voice a position long held by CEERT regarding the importance of the value of resource diversity in RPS procurement. While SDG&E may not share CEERT's view of the use of each IOU's "least cost, best fit" analysis in developing a cost

[28] Sierra Club Opening Comments, at pp. 10-13.
[29] Sierra Club Opening Comments, at p. 11.
[30] GPI Opening Comments, at p. 3.
[31] UCS Opening Comments, at p. 3.
[32] GPI Opening Comments, at p. 5.
[33] Id.
[34] SDG&E Opening Comments, at p. 7.
[35] Id.

limitation,[36] CEERT's purpose in noting that such analysis is part and parcel of the current IOUs' planning and solicitation process was to point out that each utility's *planned* procurement reflects consideration of the value specific technologies or products bring to its ratepayers. Thus, whether in reliance on LC/BF or another process in each IOU's renewable procurement plans, CEERT joins GPI and TURN in concluding that "the value of diversified resources" can and should be taken into account in determining a utility's RPS cost limitation specific to the "electric supply needs and resource base available to each utility."[37]

III.
CONCLUSION

The Opening Comments, in particular, those filed by SCE and PG&E, emphasize the need for careful, appropriate implementation of PU Code §399.15(c)-(g) in accordance with established principles of statutory construction. That statute, harmonized with related provisions and policies applicable to the RPS Program, makes the starting point for the Commission "establishing" the procurement expenditure limitation a robust IOU RPS procurement planning process.

Respectfully submitted,

March 1, 2012

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[36] Id., at p. 11.
[37] TURN Opening Comments, at p. 10; GPI Opening Comments, at pp. 6-7.

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 Reply 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 March 1, 2012, at San Francisco, California.

Respectfully submitted,

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