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 UNION OF CONCERNED SCIENTISTS ON THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to the January 24, 2012 *Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program* ("Ruling"), the Union of Concerned Scientists ("UCS") respectfully submits these reply comments.

I. The Commission should not include transmission, resource adequacy, or other "indirect costs" in its calculation of the RPS procurement mechanism.

UCS disagrees with comments submitted by the Energy Producers and Users Coalition, the California Large Energy Consumers Association, and the California Manufacturers and Technology Association ("EPUC/CLECA/CMTA") and the Division of Ratepayer Advocates ("DRA") that the Commission should consider transmission costs associated with the 33 percent Renewables Portfolio Standard ("RPS") in the development of the RPS procurement expenditure limitation.[1] The Legislature intentionally excluded these costs and Public Utilities Code § 399.15(d)(3), as amended by Senate Bill ("SB") 2 (1X) explicitly states that "indirect expenses" including "transmission upgrades" shall not be considered procurement expenditures and shall not be included in the procurement expenditure limitation. Furthermore, it is likely that the construction of new transmission lines to serve renewables for the RPS program will also be utilized by non-renewable energy resources. Interconnections to new transmission lines will be staggered. A new transmission line might be built in large part to connect specific RPS-eligible resources, but may also interconnect generation resources that are not RPS-eligible many years later. It would be nearly impossible for

[1] EPUC/CLECA/CMTA at 7; DRA at 5.

the Commission to parse out the portion of transmission construction costs attributable to renewables versus non renewables.

UCS also disagrees with DRA and Southern California Edison Company ("SCE") that the RPS procurement expenditure limitation should incorporate integration costs.[2] Integration costs, including charges for flexible ramping capacity will vary depending on the location of the renewable energy resource, timing of generation, and what else may or may not be available to generate electricity at any given moment on the system. While renewable energy generation resources introduce added variability to the electricity system, balancing area authorities deploy generation resources to ensure reliability and manage the variability inherent in electricity load independent from renewables. Integration costs to the system will be very difficult to parse out and attribute to specific renewable energy resources and therefore should be considered indirect, and ineligible for inclusion in the RPS procurement expenditure limitation.

II. Commission should not adopt an annual RPS procurement expenditure limitation for each retail seller.

UCS disagrees with EPUC/CLECA/CMTA that "SB 2 (1X) requires that the cost limitation for each utility be an annual cost limitation, as explicitly described in P.U. Code § 399.15(g)(2)(A)."[3] One of the major differences between the 20 percent RPS program and the 33 percent RPS program is the establishment of multi-year compliance periods. The Commission is explicitly prohibited from requiring a specific quantity of procurement from any intervening year between compliance periods.[4] However, retail sellers are required to make "reasonable progress" in each of the intervening years, and the Commission established a cumulative amount of RPS-eligible electricity that must be

[2] DRA at 3; SCE at 7.
[3] EPUC/CLECA/CMTA at 11.
[4] *See* Pub. Util. Code § 399.15(b)(2)(C)

procured over an entire compliance period in D.11-12-020.[5] Given the cumulative requirements of each compliance period and the explicit flexibility afforded in the intervening years by SB 2 (1X), it does not make sense for the Commission to establish annual RPS procurement expenditure limitations for each utility. Furthermore, the section of the statute that EPUC/CLECA/CMTA reference in initial comments refers to the Commission's responsibility to monitor the status of the cost limitation in order to ensure compliance with the 33 percent RPS requirement. In this regard, it is reasonable for the Commission to monitor the RPS procurement expenditure limitation on an annual basis and adjust assumptions of expected costs with actual costs once projects have come online and are generating electricity.

III. The Commission should not use the RPS expenditure limitation to approve or deny any specific RPS contract.

UCS disagrees with EPUC/CLECA/ CMTA and Pacific Gas and Electric Company ("PG&E") that the Commission should apply the RPS procurement expenditure limitation to its evaluation of individual RPS contracts.[6] In doing so, UCS is not suggesting that the utilities and the Commission remain unaware of how an individual contract will impact the overall procurement cost limitation, but points out that the Commission has no authority to deny a contract solely on the basis of how it will impact the RPS procurement expenditure limitation. Section 399.15(f) is clear that if the cost limitation is insufficient to support additional RPS procurement, an 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." (*emphasis added*) The word "may" in this sentence is key. If the Commission was required to apply the RPS procurement expenditure limitation to each contract, and reject any RPS contract submitted for approval that appeared to

[5] *See* Pub. Util. Code § 399.15(b)(1)(B)
[6] EPUC/CLECA/CMTA at 18; PG&E at 18.

exceed the cost limitation, a utility would not have a choice as to whether it should or should not refrain from signing new contracts once the cost limitation is reached. It is clear that SB 2 (1X) gives the utilities the choice to continue entering into RPS contracts (and necessarily submitting them for Commission approval) and moreover requires them to do so as long as the procurement does not exceed a de minimis increase in rates.

IV. The Commission should not include costs associated with customer-side renewable energy programs except for any RECs purchased to meet RPS requirements.

UCS disagrees with the DRA that if the California Energy Commission ("CEC") allows RECs purchased from customer-side programs to count towards RPS requirements, "the cost of these programs should count towards the [RPS procurement expenditure] limitation."[7] It is clear that any RECs purchased from customer-side programs like the California Solar Initiative would be considered "procurement credited toward achieving the renewables portfolio standard" and therefore should be included in the expenditure limitation.[8] However, the customer-side programs DRA refers to in its comments were not created in order to achieve the 33 percent RPS and already have established budgets to control costs. There is nothing in SB 2 (1X) that gives the Commission the authority to impose additional cost limits on these programs, or include the costs associated with these programs in the procurement expenditure limitation that is specifically created for the RPS.

Respectfully submitted,

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[7] DRA at 3.
[8] Pub. Util. Code § 399.15(d)(2)

VERIFICATION

I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are stated on information and 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.

Executed on March 1, 2012 in Berkeley, California.

Laura Wisland