

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

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

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES IN
RESPONSE TO ADMINISTRATIVE LAW JUDGE'S SIMON'S RULING REQUESTING
COMMENTS ON PROCUREMENT EXPENDITURE LIMITATIONS FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) offers the following comments in response to the January 24, 2012 Administrative Law Judge’s Ruling requesting Comments on the Procurement Expenditure Limitations for the Renewables Portfolio Standard Program (Ruling). DRA recommends a bill impact approach as most consistent with Senate Bill 2(1x)’s guidance on the procurement expenditure limitation for each investor-owned utility. DRA proposes that, for each utility, the Commission establish a procurement expenditure limitation that is administratively simple and reasonably consistent among the utilities, while reflecting each utility’s most recent renewable procurement plan and other considerations in enumerated in Section 399.15(c) and 399.15(d) of the Public Utilities Code.¹ DRA opposes any special carve-outs, geographically or technology-based, within the procurement expenditure limitation. Finally, DRA suggests that the most enforceable and administratively simple procurement expenditure limitation would run the length of the 33% Program: from 2011 to 2020.

II. DISCUSSION

- A. The Administrative Law Judges’ Ruling reasonably construes Public Utilities Code Section 399.15(c)’s requirement that the Commission establish a procurement expenditure limitation for each electrical corporation as allowing the Commission to develop a methodology that relies on the factors listed in Section 399.15(c), while ensuring that the limitation accomplishes the goals listed in Public Utilities Code Section 399.15(d).**

The Center for Energy Efficiency and Eligible Renewable Technologies (CEERT) contends that the questions posed by the Ruling “do not follow the language of Section 399.15 (c)” and must be corrected in order to produce a “reasonable statutory interpretation” of Sections 399.15(c)-(g).² CEERT faults the Ruling for using the word “methodology,” a word not used in Section 399.15, to describe how the Commission should establish a procurement expenditure limitation for each utility.³ CEERT claims that the Ruling’s focus on costs that are appropriate for inclusion within the methodology used to establish the procurement expenditure limitation “seems to ignore the relevant” the subsections of Section 339.15(c) that define what the

¹ All Section references in DRA’s reply comments are to the Public Utilities Code unless otherwise specified.

² Comments of the Center for Energy Efficiency and Renewable Technologies on RPS Procurement Expenditure Limitations, February 16, 2012 (CEERT Comments), p. 2.

³ CEERT Comments, p. 3.

Commission should rely on in establishing the procurement expenditure limitation.⁴ CEERT further criticizes the Ruling because Question 2 “erroneously cites as ‘399.15(c)(2)’ a latter subpart of this statute (“(d)”)⁵

DRA disagrees that the Rulings approach or its inadvertent citation of the incorrect Section “sets the Commission on a course to potentially implement Section 399.15(c)-(g) “in a manner that the Legislature did not intend.”⁶ In fact, the Ruling approaches establishment of the procurement expenditure limitation in manner that achieves the goals of the revised Renewable Portfolio Standard (RPS) statute. Section 399.15(c) lists three factors on which the Commission should rely when establishing the procurement expenditure limitation: “[t]he most recent renewable energy procurement plan;”⁷ “[p]rocurement expenditures that approximate the expected cost of building, owning and operating eligible renewable resources;”⁸ and “[t]he potential that some planned resource additions may be delayed or cancelled.”⁹ However, reliance on these three factors does not prevent the use of a methodology to develop a procurement expenditure limitation.

The Utility Reform Network (TURN), “an active participant in the legislative negotiations surrounding this portion of SBx2,” points out that “the procurement expenditure limitation methodology should be designed to apply to each Investor-Owned Utility [IOU] in a functionally similar manner.”¹⁰ TURN explains that while the same methodology should apply to each IOU, the inputs necessarily differ in order to reflect the specifics of each utility’s portfolios.¹¹ Thus, as long as the “methodology” results in a procurement expenditure limitation that reflects each utility’s most recent renewable energy procurement plan, as well as the other factors listed in Section 399.15(c), and adheres to the goals listed in 399.15(d), the use of a “methodology” to determine the procurement expenditure limitation complies with direction of 399.15(c).

⁴ CEERT Comments, p. 3.

⁵ CEERT Comments, p. 3

⁶ CEERT Comments, p. 3.

⁷ Section 399.15(c) (1).

⁸ Section 399.15(c) (2).

⁹ Section 399.15(c) (3).

¹⁰ Opening Comments of The Utility Reform Network on the Procurement Expenditure Limitations for the Renewable Portfolio Standard Program, February 16, 2012 (TURN Comments), p. 1.)

¹¹ TURN Comments, p. 1.

DRA responds to the parties in the order of the ALJ's questions, below:

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?*

- *Should the methodology be the same for all IOUs in all respects?*
 - *Should the inputs to the methodology be specific to each IOU?*
 - *Should both the methodology and the inputs be IOU-specific?*
 - *Should some other relationship between methodology and IOU be established?*
- Please specify and explain any proposal.*

DRA and numerous other parties agree that the methodology for calculating the procurement expenditure limitation should be uniform across utilities¹². DRA disagrees with the Center for Energy Efficiency and Renewable Technologies (CEERT)¹³ that the cost limitation can only be calculated specifically for each utility and should include geographic and environmental benefits that are never directly identified in the legislation. Green Power Institute (GPI) comments that the legislation does not direct the Commission to establish a cost limitation that is consistent among utilities, but acknowledges that "[t]he simpler the program design, the easier it will be to establish uniformity across IOUs."¹⁴ Thus, it appears that GPI acknowledges the value of a uniform approach to cost containment, perhaps because the ramifications of procurement expenditure limitations between utilities would include developers "shopping" projects to the utility with the

¹² See e.g., Comments of the California Wind Energy Association on a Procurement Expenditure Limitation for the California Renewables Portfolio Standard Program, February 16, 2012 (CalWEA Comments), p. 5; San Diego Gas & Electric Company Comments on Ruling Regarding Procurement Expenditure Limitations for the Renewable Portfolio Standard Program, February 16, 2012 (SDG&E Comments), pp.3-4; Comments of the Large-Scale Solar Association on Procurement Expenditure Limitations for the Renewable Portfolio Standard Program, February 16, 2012 (LSA Comments), p. 8; Southern California Edison Company's Comments on Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program, February 16, 2012 (SCE Comments), p. 5; Comments of Pacific Gas and Electric Company on Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program, February 16, 2012 (PG&E Comments), p. 4; Comments of the Alliance For Retail Energy Markets on Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program, February 16, 2012 (Arem Comments), p. 2; Opening 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, February 16, 2012 (UCS Comments), p. 4; TURN Comments, p. 2; and Sierra Club's Comments on the Administrative Law Judge's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program, February 16, 2012, (Sierra Club Comments), p. 2.

¹³ See CEERT Comments, pp. 8-9.

¹⁴ See Comments of the Green Power Institute on the ALJs Ruling Requesting Comments on RPS Expenditure Limitations, February 16, 2012 (GPI Opening Comments), p. 2.

highest limitation, as well as customers in one area of California suffering higher bill impacts than in another.

DRA finds the approach reflected in the Ruling's questions reasonable. In order to calculate a fair and transparent procurement expenditure limitation that will assure regulatory certainty, a consistent methodology will need to be applied, even though such methodology will need to reflect the specifics of each utility's portfolio. The advantage of DRA's proposed bill impact approach¹⁵ is that it can be consistent and fair across utilities and their customers.

2. *Section 399.15(d)(2) provides that "the costs of all procurement credited toward achieving the renewables portfolio standard" should count towards the procurement expenditure limitation.*
 - *Please identify the types of procurement that should be included in this requirement and identify any special rules or methods that may be required to account for the costs. Please consider at a minimum the following situations: 7*
 - *Procurement from RPS-eligible qualifying facilities under the federal Public Utility Regulatory Policies Act of 1978 (Public law 95-617);*
 - *Procurement pursuant to the renewable auction mechanism established by D.10-12-048;*
 - *Procurement pursuant to the feed-in tariff program established by SB 32 (Negrete McLeod), Stats. 2009, ch. 328;*
 - *Procurement from bilaterally negotiated contracts, not part of a utility solicitation for RPS-eligible generation resources;*
 - *Procurement by means of utility-owned generation.*
 - *Please identify all "costs" that are implicated by this requirement, taking into account those costs that are excluded by Section 399.15(d)(3).*

DRA disagrees with CEERT's assertion¹⁶ that the starting point for the procurement expenditure limitation must be each IOU's renewable resource procurement plan. While the Commission must rely on such plans to establish the procurement expenditure limitation, there is simply no language in 399.15(c) stating or implying anything to the effect of CEERT's claim. Within the actual limits set forward in statute, the Commission should be free to consider all of the tools and options available to establish a procurement expenditure limitation which will prevent disproportionate rate impacts, as directed by Section 399.15(d)(1).

¹⁵ Opening Comments of the Division of Ratepayer Advocates in Response to Administrative Law Judge's Simon's Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program, February 16, 2012 (DRA Comments), pp. 1-2.

¹⁶ CEERT Comments, p. 21.

DRA also disagrees with CalWEA’s expectation that the costs included in the cost cap “will be limited to the IOUs’ direct contractual costs of procuring wholesale RPS generation.”¹⁷ As DRA has previously stated, the cost of utility-owned generation producing RPS-eligible energy should be included in any cost cap.¹⁸ Furthermore, secondary direct costs¹⁹ that are necessarily incurred to preserve grid stability while interconnecting RPS eligible resources should also be included in the procurement expenditure limit. Unlike the indirect expenses noted in Section 399.15(d)(3), which may also result from the normal course of operations or other programs, these costs are closely and directly tied to specific RPS-eligible projects or the RPS program itself. In particular, as there is no other mechanism for tracking and containing such expenditures, the procurement expenditure limit would provide a full picture of the cost impacts of RPS procurement, and help capture the real and significant impact such expenses have on ratepayers’ bills.

DRA therefore supports CalWEA’s expectation that “the analysis of the rate impact of full compliance with the RPS program... will involve a much broader calculation than simply totaling the contractual costs for RPS-eligible power.”²⁰ DRA believes that a complete rate or bill impact analysis would not only include the avoided costs and direct benefits, but also the very real and substantial aforementioned costs to ratepayers in procuring RPS power. Leaving such expenditures out of the limit could lead to an underestimation of RPS costs and may violate Section 399.15(d)(1)’s requirement that the “limitation is set at a level that prevents disproportionate rate impacts.” In addition, it would create perverse incentives for utilities to pursue RPS-eligible energy that incurs low costs under the procurement expenditure limitation but actually burdens ratepayer with high costs that “fall out” of the limitation.

¹⁷ CalWEA Comments, p. 6.

¹⁸ As explained in its opening comments, DRA also recommends inclusion of the following costs in determining each utility’s procurement expenditure limitation: RPS-eligible Qualifying Facilities (QFs) pursuant to Public Utility Regulatory Policy Act (PURPA), the Renewable Auction Mechanism (RAM), Feed-in Tariff (FIT), bilaterally negotiated contracts, contracts arising from solicitations, the Solar Photovoltaic Program (SPVP), and any RPS-eligible energy the utilities purchase from customer-side programs under Net Surplus Compensation (NSC) or other mechanisms. DRA Comments, p. 2.

¹⁹ Secondary direct costs include, but are not limited to, program administrative costs, distribution upgrades, integration costs, Resource Adequacy (RA) replacement value-for RPS contracts which do not provide resource adequacy, and, to the extent permitted, transmission infrastructure.

²⁰ CalWEA Comments, p. 6.

- *Should the statutory characterization of “the costs of all procurement credited toward achieving the renewables portfolio standard” be interpreted as including:*
- *Estimates, made at the time a procurement contract is approved by the Commission, of the costs that will be incurred over a period of time.*
- *should the period of time be the entire period of the contract?*
- *should it be some other time period? Please describe and justify the choice of another period; or*
- *A record of actual expenditures by the utility for the procurement contract over a period of time.*
- *should the period of time be the entire period of the contract?*
- *should it be some other time period? Please describe and justify the choice of another period.*
- *how should the actual expenditures be determined?*
- *How should RPS procurement costs incurred prior to the implementation of the procurement expenditure limitation required by SB 2 (1X) be addressed in the procurement expenditure limitation methodology?*

DRA disagrees with CalWEA’s claim that “already-incurred RPS costs should not be subject to any limitation, because those contracts have already been signed and improved.”²¹ As DRA has previously stated, all RPS procurement costs -- incurred, projected, and future -- between 2011 and 2020 should be included in a procurement expenditure limitation. This would provide a complete picture of total costs and enable the Commission to establish an appropriate cost limitation. TURN notes that the statute does not exempt prior contract obligations from the limit.²²

- *How should the costs of procurement from utility-owned generation be addressed in the procurement expenditure limitation methodology? Please discuss any issues not addressed in response to other questions.*

DRA addresses Questions 3 and 4 together:

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

AND

²¹ See CalWEA Comments, p. 8.

²² See TURN Comments, p. 3.

4. *Should the procurement expenditure limitation methodology provide a limitation for a different time period or set of time periods?*

- *Annual.*
- *Each compliance period through 2020 (i.e. 2011-2013; 2014-2016; 2017-2020).*
- *The period 2011-2015 and the period 2016-2020.*
- *The year 2020.*
- *The entire time an RPS procurement obligation has been in place (i.e., beginning in 2003).*
- *Some other time period. Please specify and explain the reasons for the time period proposed.*

DRA reiterates its position that a single procurement expenditure limitation for the period of 2011-2020 sends the most clear and reliable signal to the market, is the simplest to enforce, and best protects ratepayers from market fluctuations.²³ Since the Commission has a statutory right to adjust the cost limitation in 2017 or later²⁴ it has the flexibility to respond to unforeseen circumstances before any enforcement action would take place.

Some parties proposed that the limitation be established for each Compliance Period²⁵, however, the effective difference between that proposal and a single limitation with a potential adjustment between 2017 and 2020 is minor. Essentially, in the Compliance Period model, the limitation will be “recalculated” twice whereas with DRA’s proposal it will be recalculated once, if needed. However, what is lost with a procurement expenditure limitation for each Compliance Period is the consistency and clarity of a single cost limitation. The Legislation directs the Commission to “establish a limitation for each electrical corporation,”²⁶ and it is not clear that multiple limitations were contemplated.

DRA recommends that the utilities file annual reports of progress with respect to the limitation²⁷ and that the Commission issue an annual report for the public and Legislature demonstrating utilities’ progress toward complying with the procurement expenditure limitation.

²³ See DRA Opening Comments at p. 7.

²⁴ Section 399.15(e)(1).

²⁵ See SDG&E Comments, pp.6-7; TURN Comments, pp. 4-5; CEERT Comments, pp.21-22.

²⁶ Section 399.15(c).

²⁷ See DRA Opening Comments at p. 11. DRA recommends that the report include a cumulative summary of procurement expenditures.

5. *Since RPS procurement obligations continue indefinitely, how should the procurement expenditure limitation methodology treat RPS procurement in the years after 2020?*
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.”*
 - *What elements of an IOU’s RPS procurement plan should be used in establishing the procurement expenditure limitation methodology?*
 - *Should the methodology include a mechanism for updating the limitation with information from the IOU’s most recent RPS procurement plan?*
 - *Should the methodology use information from the most recent RPS procurement plan available at the time the Commission adopts the methodology, but not provide for periodic updates from more recent RPS procurement plans?*

DRA believes that the Commission should rely on each utility’s most recent RPS procurement plan to help determine a reasonable bill impact. DRA envisions an iterative process in which the Commission uses the most recent procurement plans – as well as the cost information available -- to assure the reasonableness of a proposed bill impact.

DRA does not believe that the cost limitation should be updated with each annual RPS procurement plan.²⁸ DRA disagrees with GPI and other parties who claim that each procurement plan should guide the budget for that utility for that year.²⁹ As explained above, an annually-determined limitation would lead to a chaotic implementation of the 33% Program and would neither adequately protect ratepayers, nor provide market participants regulatory certainty.

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?*
 - *How should the methodology define a “delay”? A “cancellation”? Please discuss usual commercial practice and provide examples in support of the proposed definition. Please provide examples of how a delay could be distinguished from a cancellation for purposes of the procurement expenditure methodology.*
 - *Should delays in the progress of contracted-for RPS resources be treated differently from cancellations?*
 - *Should the methodology use data on the historical record of delays/cancellation of RPS procurement contracts for each IOU?*
 - *Should the methodology use each IOU’s projections of likely delays/cancellations in the future?*

²⁸ See DRA Comments, pp. 8-9; SDG&E Comments, p. 8; PG&E Comments, p.10.

²⁹ See GPI Comments, p. 4; Sierra Club Comments, p.13.

- *Should the methodology create projections of delays/cancellations of contracted-for RPS generation projects in some other way? Please describe the proposal in detail.*
- *How should the potential for delays/cancellations, however determined, be used in the procurement expenditure limitation methodology?*

Historical rates of failure and delay are a good starting point for calculating the potential for delays/cancellations.³⁰ DRA reiterates that a standard delay/failure rate would be the most administratively straightforward. Although the utilities currently often estimate each project's likelihood of success or failure through its development process, including that subjective rating in the development of a cost limitation would be near impossible as the utilities' portfolios change and evolve constantly. The subjective rating of a project's likelihood to succeed can still play a part in each utility's annual RPS procurement plan to inform its procurement of contracts toward 33%. However, calculating the cost limitation requires the assumption of one defensible and clear delay/cancellation rate. The historical rate provides such a number.

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?*
- *Annually.*
 - *At the beginning of each compliance period (i.e. 2011-2013; 2014-2016; 2017-2020).*
 - *Once for the period 2011-2015 and once for the period 2016-2020.*
 - *Once for the period 2011-2020.*
 - *Once for the year 2020.*
 - *Once for the entire time an RPS procurement obligation has been in place (i.e., beginning in 2003).*
 - *Some other time period. Please specify and explain the reasons for the time period proposed.*

As explained in answers Questions 3, 4, and 6 the procurement expenditure limitation only needs to be calculated once. The limitation is intended as a protection for ratepayers and to promote a competitive renewable market with optimal pricing. A procurement expenditure limitation that is reinvented every year or Compliance Period will not be as effective at achieving that goal because, instead of sending a consistent price signal, it will fluctuate with the market. This increases regulatory uncertainty and risks driving up the cost and difficulty for IOUs and developers in planning for and achieving RPS goals.

³⁰ See CalWEA Comments, p. 12; DRA Comments, p. 11.

As TURN and SCE point out, the Commission may recalculate the limitation once between 2017 and 2020.³¹ This flexibility to increase -- or decrease -- the limit should be viewed as a measure that will be taken if necessary, but is not automatic. If the Commission chooses to set an automatic review of the cost limitation after 2017, the review should include the possibility of decreasing, not just increasing, the procurement expenditure limitation.

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.”

- How should such a margin of above-minimum procurement be addressed in the procurement expenditure limitation methodology?

- How should the methodology treat the interaction of the margin of above-minimum procurement and the potential for delays and/or cancellations?

As many parties stated, the assumed rate of delays/cancellations that will be calculated pursuant to Question 8 above, should be used to determine the margin of over procurement.³² There are two ways in which the Commission could comply with both Section 399.15(c)(3), which directs the Commission to rely on “[t]he potential that some planned resource additions may be delayed or cancelled” in establishing the procurement expenditure limitation and Section 399.13(a)(4)(D), which requires the Commission to adopt the margin of over procurement to account for failures and delays. The Commission can adopt a higher procurement expenditure limitation than needed to allow for procurement above 33% with some failures expected. Or, the Commission can set the procurement expenditure limitation at an expected 33% procurement level, mandate the utilities procure a specified amount above that, and allow the utilities to recover their costs above the procurement expenditure limitation if the failure rates turn out to be lower than expected. The first method results in a high but “immovable” cost limitation, while the second would generate a limitation that is “realistic,” but could then be surpassed.

13. Should the procurement expenditure limitation methodology take into consideration the value of diversification of resources in IOUs’ RPS procurement? Specifically,

- Should the methodology create a set of technology-specific expenditure limitations?

³¹ See TURN Comments p. 8; SCE Comments, p. 13.

³² See LSA Comments p. 19; CalWEA Comments, pp.15-16; SDG&E Comments, p. 10.

- Should the methodology create a set of geographically-defined expenditure limitations?
- Should the methodology give “extra credit” for diversification by technology?
- Should the methodology give “extra credit” for geographic diversification?

The majority of parties³³ agree with DRA’s recommendation not to include specific limitations or extra credit for technology-specific or geographically-defined diversity in determining the procurement expenditure limitation.

While Centennial West claims that the “*potential* benefits from diverse resource types and locations warrant their *preferential treatment* in this methodology,” DRA believes that the utilities already have a way of accounting for favorable locations and production profiles of various technologies within their Least-Cost, Best-Fit valuations. Including special carve-outs within the procurement expenditure limitation would unfairly favor certain technologies and geographic regions for the long term, even if they lose their value in the future.

The Center for Energy Efficiency and Renewable Technology claims that the only way to meet, among other things, the legislative intent of 399.11- the ““need for a diversified and balanced energy generation portfolio,””- is to “adopt a procurement expenditure limitation that reflects the value of the renewable procurement... as to technology, geographic location, and achievement of diversity.”³⁴ Going even further, the Sierra Club proposed several procurement limitation carve-outs for attributes beyond technological and geographic diversity.³⁵ However, as DRA demonstrates in its previously submitted comments, the idea that the *only* way to meet the goals of 399.11 is to incorporate the indirect values of renewable energy into a procurement expenditure limitation is not only demonstrably false, but may be inapplicable in this ruling.

³³ See Initial Comments of Transwest Express LLC, February 16, 2012 (Transwest Comments), p. 3; CalWEA Comments, p. 18; SDG&E Comments, p. 14 ; Comments of the Independent Energy Producers Association on the Procurement Expenditure Limitations for the RPS Program , February 16, 2012 (IEP Comments), p. 21; SCE Comments, p. 15; AReM Comments, p. 9.

Comments that recommend that such values be incorporated into the overall cost limit rather than specific carve-outs include LSA Comments, p. 21; TURN Comments, p. 11; UCS Comments, p. 10; PG&E Comments, p. 16; GPI Comments, p. 7 .

³⁴ See CEERT Comments, p. 19.

³⁵ See Sierra Club Comments, pp. 24-26.

Specific carve-outs are unnecessary. CalWEA correctly observed in its opening comments RPS content categories provide a built-in measure of geographic diversity.³⁶ Also, as DRA has previously argued, price trends and the many existing ratepayer-funded programs supporting renewable energy have helped contribute to the demonstrable increase in California’s energy diversity, both overall and within renewables.

Specific carve-outs are not consistent with the requirements of the RPS statute, which contains language specifying limitations or “extra-credit” for technological or geographic diversity. As PG&E noted in its comments, specific carve-outs would be “contrary to other provisions in SB 2 (1x) that contemplate IOU discretion to determine the optimal mix of renewable resources, and to Commission precedent opposing carve-out-like mechanisms.”³⁷ In other words, they would not only add to the complexity and administrative burden of an already complicated RPS program, but place an implicit restriction on resources to be acquired under the remaining limit. This would perversely limit an IOU’s ability to meet its RPS goals through the most economical renewable resources and risk disproportionate rate impacts, possibly violating 399.15(d)(1).

14. How should the procurement expenditure limitation be applied to the Commission’s evaluation of individual RPS contracts?

- The methodology should include a way to calculate a benchmark limit on the price of RPS procurement contracts (in dollars per megawatt-hour of generation) of a particular duration and technology type.*
- The methodology should include a way to consider an individual RPS procurement contract, on a total expected cost basis, as a fraction of some larger procurement expenditure limitation.*
- The methodology should use some other way to consider an individual RPS procurement contract in the context of the procurement expenditure limitation. Please provide a detailed explanation.*
- The methodology should not be applied to individual RPS procurement contracts at all.*

DRA agrees that a benchmark in dollars per megawatt-hour would result in setting a specific price point for the market which would be undesirable.³⁸ The utilities should submit, along with each Advice Letter, an update on where the utility is with respect to their cost limitation

³⁶ See CalWEA Comments, p. 18

³⁷ See PG&E Comments, p. 16.

³⁸ See TURN’s Comments, p. 10; SDG&E’s Comments, p. 13.

and the proposed contract's effect on the cost limitation. The utilities follow a similar process currently with the Above-Market Funds. The Commission will then review a proposed contract for reasonableness in light of the procurement expenditure limitation.

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)?

- *What elements would be required in order to monitor the status of the cost limitation for each IOU?*
- *How often should the status of the cost limitation for each IOU be examined?*
- *Annually;*
- *Once per compliance period;*
- *Once before January 1, 2016;*
- *Once before January 1, 2016 and again before December 31, 2020;*
- *Once before December 31, 2020;*
- *At the discretion of the Director of Energy Division;*
- *Some other time interval.*

DRA agrees with UCS that the Commission should track the impact of each proposed contracts on the cost limitation³⁹ and with AReM's recommendation that the Commission should monitor the cost limitation closely and report regularly to the public.⁴⁰ The utilities, when submitting a contract via an Advice Letter, will need to describe the contract's effect on their cost limitation, much as they do currently for Above-Market Funds.

III. CONCLUSION

DRA recommends that for each utility, the Commission establish a procurement expenditure limitation that is administratively simple and reasonably consistent among the utilities, while reflecting each utility's most recent renewable procurement plan and other considerations enumerated in Section 399.15(c) and 399.15(d) of the Public Utilities Code. DRA further recommends that the Commission adopt a procurement expenditure limitation that can be calculated and approved in a transparent and straightforward manner with use of aggregated data available to all parties. The expenditure limitation should include all of the costs associated with renewables so that the Commission and stakeholders have an accurate accounting of the total costs of achieving the 33% RPS mandate.

³⁹ See UCS' Opening Comments, p. 10.

⁴⁰ See AReM's Opening Comments, p. 9.

Respectfully submitted,
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VERIFICATION

I, Diana L. Lee, am counsel of record for the Division of Ratepayer Advocates in proceeding R.11-05-005, and am authorized to make this verification on the organization's behalf. I have read the **“REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S SIMON'S RULING REQUESTING COMMENTS ON PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM”** filed on March 1 2012. I am informed and believe, and on that ground allege, that the matters stated in this document are true. I declare under penalty of perjury that the foregoing is true and correct.

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

/s/ DIANA L. LEE
Diana L. Lee
Staff Counsel