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 UTILITY REFORM NETWORK ON THE PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to the January 24, 2012 ruling of ALJ Simon, The Utility Reform Network (TURN) hereby submits these reply comments on the procurement expenditure limitations contained in Public Utilities Code §399.15 and enacted in SBx2 (Simitian). TURN uses these reply comments to express concerns about some positions raised in the opening comments of various parties.

I. INDIRECT COSTS MAY NOT, AND SHOULD NOT, BE INCLUDED IN THE PROCUREMENT EXPENDITURE LIMITATION

Both SCE and DRA argue that the procurement expenditure limitations should include various costs outside of the payments directly made to renewable generators and sellers under Power Purchase Agreements (PPAs). SCE proposes the inclusion of "renewable integration costs" on the basis that they approximate the "firming and shaping costs" that were included in the Above-Market Fund (AMF) calculation under the 20% RPS program.[1] DRA proposes to include "costs incurred to support" renewable procurement including "distribution upgrades, integration costs, Resource Adequacy (RA) replacement value, and possibly the construction of new transmission infrastructure."[2] TURN disagrees with both SCE and DRA.

The Legislature did not intend to allow the Commission to assign a wide array of indirect costs to the expenditure limitation, in part to dissuade the IOUs from engaging in elaborate modeling exercises designed to attribute all theoretical system costs to renewable generation. SBx2 contains a slightly augmented version of the language formerly contained in §399.15(d)(2). The reference to "indirect expenses" in previous law was consistently interpreted by the Commission to mean costs not paid

[1] SCE opening comments, pages 6-7.
[2] DRA opening comments, pages 3-4.

directly to the renewable power seller.[3] There is no reason to revisit the understanding of this language and the meaning of "indirect expenses", "imbalance energy charges", and "transmission upgrades".

While TURN recognizes that renewable energy project operations do create some additional system costs, these costs are very difficult to directly attribute to an individual facility. Even in the case of transmission upgrades (which are expressly prohibited from inclusion in the expenditure limitation), a particular network investment could be triggered by a specific new facility interconnection but may also provide network benefits that offer real savings to the entire transmission system. The balance of costs and benefits may change over time. The Commission's efforts to have IOUs attribute transmission costs to individual PPA bids has not yielded reliable results.

Other indirect costs are even more susceptible to widely varying interpretations. In R.10-05-006, estimates of renewable integration needs (through 2020) have shifted from an initial CAISO estimate of 4,500 MW above the planning reserve margin to a finding of no additional need for conventional generating capacity. This dramatic swing highlights the fact that indirect costs are extremely difficult to forecast and are subject to constantly changing methodological approaches. Even SCE admits that such costs are not be easily forecasted and calculated.[4]

The inclusion of firming and shaping costs in the expenditure calculation is warranted since these direct costs are necessary to schedule the energy into a California Balancing Authority (CBA) and therefore approximate the costs paid for energy and RECs from a generator inside the CBA. Moreover, the Commission

[3] Resolution E-4199, pages 40-41.
[4] SCE opening comments, page 7.

previously concluded that firming and shaping costs should be included in the calculation of AMFs and distinguished them from indirect costs.[5]

II. APPLICABLE TIME PERIOD FOR THE EXPENDITURE LIMITATION

Parties offer a myriad of viewpoints regarding the duration of the procurement expenditure limitation. Some argue for a single limit applicable to the years between 2011 and 2020 (SCE, PG&E, DRA, LSA) while others argue for an annual limitation (AREM, CLECA/EPUC/CMTA), CalWEA proposes that the limit apply for the duration of each LTPP case, and GPI proposes that the limit be averaged for each compliance period.

As explained in TURN's opening comments, the Commission has discretion to apply the limitation to a single year or a combination of years. TURN opposes the use of annual limits because they do not properly reflect the lumpiness of procurement activities and do not address the fact that quantities are averaged over multi-year periods for compliance purposes. As a result, an IOU may satisfy cost-minimizing practices while still procuring far more renewable power than expected (and incurring greater costs than anticipated) in a particular year. An arbitrary annual limit could prove counterproductive and fail to promote least-cost long-term procurement planning unless the Commission allows IOUs to bank excess headroom under the cap from one year to the next.

The use of a single limit covering the entire period (2011-2020) is far more feasible but may fail to address cumulative retail rate impacts through 2020. If an IOU

[5] Resolution E-4199, page 59 ("A bundled RPS contract, by definition, requires that RPS-eligible energy that is generated at a facility, with its first point of connection to the transmission network outside of California, to be scheduled for consumption by California end-use retail customers (Public Resources Code 25741). Thus, the cost associated with firming and shaping out-of-state intermittent energy, so that it can be transferred across balancing authority areas and into California, is a direct cost of the RPS contract, regardless of whether the firming and shaping agreement is part of the RPS contract with the generator or is in a separate contract.")

exhausts the limitation far in advance of 2020, ratepayers may face higher total rate increases than those served by an IOU that exhausts the limitation in 2020. TURN continues to recommend limits for each compliance period to strike the right balance between multi-year flexibility and the goal of limiting cumulative multi-year rate impacts. If the Commission can craft a limitation that addresses cumulative rate impacts under various scenarios, TURN is open to supporting a single limit through 2020. The Commission would also be required to adopt a limit for the post-2020 timeframe.

III. FREQUENCY OF COST CAP CALCULATION

While most parties accept the statutory limit on modifying the procurement expenditure limitation prior to 2017, some argue for periodic updates to the methodology and inputs.[6] This approach is not consistent with the §399.15(e) prohibition on adopting a "revised cap" prior to 2017. The Commission should abide by this particular restriction.

More frequent revisions to the expenditure limitation will render it meaningless, encourage extensive litigation at every possible opportunity and render the limitation more susceptible to political interventions. Moreover, renewable energy market participants need to have confidence that limits will not be subject to significant modifications on short notice. Limiting modifications to the prescribed timing in statute will promote such confidence and allow market participants to proceed with long-term development planning efforts.

IV. APPLYING COST LIMITATION TO INDIVIDUAL CONTRACTS

[6] CalWEA opening comments, page 13; UCS opening comments, page 6.

SCE expresses concern about the creation of a "benchmark limit on the price of RPS procurement contracts."[7] TURN agrees with this concern. The Legislature eliminated reliance on the Market Price Referent (MPR), in part, to address concerns that this mechanism may have influenced bidding behavior and become a pricing magnet. Establishing specific price benchmarks for each technology and applying them to individual contracts would likely influence sellers to bid to the benchmarks.

TURN can attest to the fact that a significant number of bids in previous IOU solicitations (but not in 2011 or 2012) were remarkably close to the applicable MPR. This phenomena demonstrates that some bidders incorrectly perceived that the MPR was being used by the IOUs as a basis for assessing the reasonableness of PPA pricing. The creation of new pricing benchmarks (which are likely to be quickly outdated) could have the same effect on bidding behavior. Such an outcome would not serve the interests of ratepayers.

V. ISSUES RAISED BY SMALL AND MULTIJURISDICTIONAL UTILITIES

Small and Multi-Jurisdictional Utilities (SMJUs) are subject to the same procurement expenditure limitations applicable to the other IOUs. SMJUs satisfying the requirements of §399.17 may not substitute an entirely different approach for cost containment and are instead "subject to a limitation on procurement expenditures established by the Commission pursuant to subdivision (c) of Section 399.15."[8] Despite this requirement, Pacificorp urges the Commission to allow the procurement expenditure limitations to be based on "RPS cost limits calculated pursuant to other states' RPS requirements."[9] Specifically, Pacificorp urges the Commission to rely on the "total incremental cost" to meet the Oregon and Washington RPS targets and provide for an alternative compliance payment in the event that RPS costs exceed

[7] SCE opening comments, page 15.
[8] Cal. Pub. Util. Code §399.17(f).
[9] Pacificorp opening comments, page 3.

specific thresholds.[10] The Commission should reject this proposal as inconsistent with the California RPS law.

The requirements of the Oregon and Washington RPS programs differ from the California program in a number of respects. First, the procurement targets are substantially different in these other states. Oregon requires major utilities to achieve a 15% renewable portfolio by 2015, 20% by 2020 and 25% by 2025. Washington requires major utilities to achieve a 3% renewable portfolio through 2015, 9% from 2016 through 2019 and 15% by 2020. These targets are far les ambitious than the requirements of SBx2 and cannot serve as a valid basis for the California procurement expenditure limit. Second, these states use an alternative compliance payment approach that is inconsistent with the enforcement and penalty provisions of SBx2. Therefore, Pacificorp's proposal should be rejected.

Respectfully submitted,

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[10] Pacificorp opening comments, page 4.

VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

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

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

_____/S/_____

Matthew Freedman
Staff Attorney