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 PROPOSED DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Dated: May 21, 2012

REPLY COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE PROPOSED DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD

Pursuant to the April 24, 2012 *Proposed Decision Setting Compliance Rules for the Renewables Portfolio Standard Program* ("Proposed Decision" or "PD"), the Union of Concerned Scientists ("UCS") respectfully submits these reply comments.

a. Bankable excess procurement should "in no event" contain unbundled RECs.

UCS agrees with CalWEA that the PD's method to calculate excess procurement, which would reduce excess procurement "only by the quantity of RECs meeting the criteria of Section 399.16(b)(3) retired in the compliance period that are greater than the quantity that may be credited towards compliance pursuant to Section 399.16(c)(2)"[1] is "not consistent with the broad prohibition on banking of unbundled RECs set forth in Section 399.13(a)(4)(B)."[2] As stated several times in opening comments, UCS believes that the statute is quite clear on how unbundled RECs executed after June 1, 2010 should be treated when calculating excess procurement. Quite plainly, the statute says "in no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement."[3] The PD's proposal would allow retail sellers to bank unbundled RECs as long as the amount does not exceed the limitations set forth in § 399.16(c)(2), which directly contradicts the statutory prohibition on banking unbundled RECs.

b. The Commission should not disregard the statute's prohibition on banking unbundled RECs in order guarantee retail sellers have 36 months to retire RECs.

UCS's August 30th comments on RPS rules and its opening comments on this PD strongly object to the Commission ensuring an unbundled REC has a 36-month shelf-life if in effect this means a retail seller can bank unbundled RECs from one compliance period to another.[4]

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[1] PD, p. 63.
[2] CalWEA, p.7.
[3] Section 399.13(a)(4)(B)
[4] *See* UCS Comments on New Procurement Targets and Certain Compliance Requirements for the RPS Program, August 30, 2011, p.9 and UCS Opening Comments on PD, pp.3-4

Section 399.21(a)(6) creates a limit on the shelf-life for any REC, but does not guarantee that the eligibility of that REC will override other sections of the statute that expressly prohibit certain RECs from being banked from one compliance period to another. The word "within" used in this section simply creates a maximum period that a REC is eligible for compliance. If the Legislature had wanted the 36-month shelf-life of a REC to override the "in no event" language prohibiting banking in §399.13(a)(4)(B), it would made this clear.

Furthermore, Southern California Edison ("SCE") implies that the Legislature specifically guaranteed a 36-month shelf life for all RECs, including unbundled RECs, because a previous version of the RPS bill read: "[n]o renewable energy credit shall be eligible for compliance with the renewables portfolio standard procurement requirement *unless associated with electricity generated during the same compliance period in which the credit is claimed by the retail seller or local publicly owned electric utility*."[5] SCE comments overreach. The language quoted in SCE's comments was amended because a literal interpretation of the italicized phrase would have prohibited the banking of any procurement for the RPS program, which obviously the Legislature did not intend to do. The removal of this language does not prove the Legislature intended the enacted language in § 399.21(a)(6) to override the very clear restriction on banking unbundled RECs set forth in § 399.13(a)(4)(B).

Finally, UCS's believe that § 399.21(a)(6) does not guarantee any REC a 36-month shelf life does not mean that UCS is advocating every REC procured by a retail seller must be retired in the compliance period in which it was purchased. In contract, UCS strongly supports banking excess procurement from one compliance period to another as long as it does not violate the banking restrictions set forth in § 399.13(a)(4)(B).

c. The Commission should adopt a long-term contracting requirement equivalent to at least 25% of a retail seller's compliance obligation in each RPS compliance period.

UCS wishes to correct an error in its opening comments, which refer to its suggestion the Commission require at least 25% of a retail seller's expected generation in a compliance period be in the form of long-term contracts. Although the 25% recommendation was included correctly in the subject header for recommendation "g" in UCS's comments, the final line in the corresponding paragraph of that section is inconsistent: "This would mean the long-term

[5] SCE, p.7. (emphasis added by SCE and repeated here).

contracting requirement for the 2014-2016 and 2017-2020 compliance periods would be 20% of total retail sales for those periods."[6] UCS wishes to correct that sentence to read: This would mean the long-term contracting requirement for the 2014-2016 and 2017-2020 compliance periods would be **25%** of total retail sales for those periods.

d. A series of short-term contracts or short-term contracts with the option to extend should not be considered "long-term" for banking purposes

UCS disagrees with Pacific Gas and Electric ("PG&E") that the Commission should exclude from the definition of "contracts of less than 10 years in duration" those which are short-term but are part of a series of contracts, or short-term contracts with an option to extend beyond 10 years.[7] Both of the contract scenarios PG&E describes in its comments refer to contractual relationships that are short-term in nature, but may ultimately provide a retail seller with RPS-eligible electricity for 10 years or more, based on future decisions made between the renewable energy developer and the retail seller. The Commission should reject PG&E's suggestion. The Legislature specifically prohibited short-term contracts from bankable procurement because short-term contracts are less likely to promote the development of new renewable energy generation projects, do not provide electricity customers with a meaningful price hedge, and will only temporarily allow a retail seller to meet RPS compliance obligations. In addition, one could argue that a retail seller always has the option to renew a short-term contract. Therefore, a short-term contract with an option to renew is not more similar to a long-term contract than a short-term contract without an explicit option to renew.

e. Retail sellers should not include banked pre-2011 procurement in the 14% "safe harbor" calculation.

UCS disagrees with San Diego Gas and Electric ("SDG&E") that § 399.15(a) allow retail sellers to count banked procurement in the 14% "safe harbor" calculation.[8] Section 399.15(a) says: "[f]or any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources *in 2010*, deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article."[9] SDG&E attempts

[6] UCS Opening Comments, p.6.
[7] PG&E, p.5.
[8] SDG&E, p.2.
[9] Section 399.15(a) (emphasis added)

to justify including earmarked future procurement in the "safe harbor" calculation because such procurement is from an eligible renewable energy resource. UCS believes this argument makes no sense - any procurement from the RPS program must be from an eligible renewable energy resource - and further directs the Commission's attention to the "in 2010" phrase in that sentence, which clearly requires the procurement used in the safe harbor calculation to have occurred by December 31, 2010.

Respectfully submitted,

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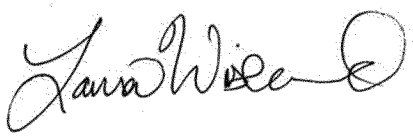
VERIFICATION

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 May 21, 2012 in Berkeley, California.



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