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 SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE PROPOSED DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

AIMEE M. SMITH
101 Ash Street, HQ-12
San Diego, CA 92101
Phone: (619) 699-5042
Fax: (619) 699-5027
E-mail: amsmith@semprautilities.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

May 21, 2012

#267799

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 SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE PROPOSED DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") hereby submits these reply comments concerning the proposed *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program* (the "PD") issued in the above-captioned proceeding.

The PD implements changes to the rules for retail sellers' compliance with the Renewables Portfolio Standard ("RPS") program resulting from adoption of Senate Bill ("SB") x1 2 ("SB 2") and sets the parameters for retail sellers to report to the Commission on their compliance with RPS requirements.[1/] In its opening comments, SDG&E expressed its strong support for the proposals set forth in the PD and proposed certain limited modifications to the PD intended to (i) ensure that implementation of the 14% safe harbor is consistent with SB 2; (ii) clarify the requirements related to short-term contracting; (iii) clarify, to the extent a retail seller seeks to use renewable energy credits ("RECs") to satisfy a prior deficit, what REC requirements apply; and (iv) clarify the relationship between the June 1 annual RPS compliance report deadline and the availability of transaction data included in the Western Renewable Energy

[1/] Senate Bill x1 2 (Stats. 2011, Ch. 1).

Generation Information System ("WREGIS") administered by the California Energy Commission ("CEC").

In their jointly-filed comments on the PD, The Utility Reform Network ("TURN") and the Coalition of California Utility Employees ("CUE") argue that the PD errs in concluding that restrictions on banking adopted in new § 399.13(a)(4)(B) do not apply to contracts "grandfathered" pursuant to new § 399.16(d).[2/] TURN/CUE argue that the PD errs in "arbitrarily narrow[ing] the scope of these restrictions given the absence of any language in § 399.13(a)(4)(B) suggesting that certain transactions should be exempted."[3/] TURN/CUE's claim lacks merit. The PD's determination is supported on both statutory interpretation and public policy grounds.

First, contrary to TURN/CUE's claim, § 399.13(a)(4)(B) does in fact include language making clear that the restrictions set forth therein do not apply to procurement from "grandfathered" contracts. By its terms, the provision applies to excess procurement accumulated "beginning January 1, 2011." Thus, the PD correctly concludes that the restrictions on banking adopted in new § 399.13(a)(4)(B) apply on a going-forward basis, and do not apply to "grandfathered" contracts. In addition, by using the language "count in full" in § 399.16(d), the Legislature made clear that it intends for the full value of such contracts to carry forward into the new RPS regime. As the PD notes, the Legislature "could have qualified the broad scope of the language of § 399.16(d), but did not do so."[4/] The California Supreme Court had held that "[i]n construing a statute to ascertain the intent of the Legislature, first and foremost, the Commission should give effect to the plain meaning of the language in the statute."[5/] Here, the

---

[2/] All statutory references herein are to the Public Utilities Code unless otherwise noted.
[3/] TURN/CUE Comments, p. 9.
[4/] PD, p. 30.
[5/] *Collection Bureau of San Jose v. Rumsey,* 24 Cal.4th 301, 310 (2000).

PD gives effect to the plain meaning of the language of the statute by declining to read into it limitations that are not mentioned.

Finally, TURN/CUE's interpretation is contrary to the public interest. Limiting the ability of investor-owned utilities ("IOUs") to bank generation from grandfathered contracts would unfairly deprive ratepayers of the full benefit of such procurement. As SDG&E noted in its opening comments, the Commission recognized under the prior RPS framework that banking of excess procurement promoted the policy goals of the RPS legislation by, among other things, creating an incentive for early procurement.[6/] The procurement strategy undertaken by IOUs prior to adoption of SB 2 relied on the rules related to forward banking in place at the time of procurement. Subjecting generation from "grandfathered" contracts to the new banking limitations adopted § 399.13(a)(4)(B) would unfairly preclude use of Commission-approved, ratepayer-funded banked generation for RPS compliance, to the clear detriment of utility ratepayers.

The California Supreme Court has made clear that "[i]n construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose. Therefore, a practical construction is preferred."[7/] Since, as discussed above, the public interest would be harmed by depriving ratepayers of the benefits of banked procurement from "grandfathered" contracts, the PD properly concludes that restrictions on banking adopted in new § 399.13(a)(4)(B) do not apply to "grandfathered" contracts. Accordingly, TURN/CUE's comments should be rejected.

The Commission should also reject the arguments offered by the Green Power Institute ("GPI") regarding application of penalties in the event (i) a retail seller has a pre-2011 deficit,

---

[6/] *See* D.03-03-06-071, *mimeo*, p. 44.
[7/] *California Correctional Peace Officers Assn. v. State Personnel Bd.,* 10 Cal.4th 1133, 1147 (1995).

but satisfies the "safe harbor" established in new § 399.15(a); or (b) a retail seller has a pre-2011 deficit and does not satisfy the "safe harbor" provision. GPI suggests that in both cases, the retail seller would be subject to penalties for the pre-2011 deficit.[8/] GPI's claim is misguided and should be rejected.

The California Supreme Court has held that "the expression of one thing in a statute ordinarily implies the exclusion of other things."[9/] In § 399.15(a), the Legislature made clear its intent that satisfaction of the 14% safe harbor would provide a "clean slate" for the retail seller. By omitting discussion of penalties in expressing the outcome where the 14% safe harbor is satisfied, the Legislature implicitly excluded an outcome involving assessment of penalties. Likewise, the discussion set forth in § 399.15(a) makes clear that a pre-2011 deficit where the 14% safe harbor is *not* satisfied *would* result in carry-forward of the procurement deficit. Again, the omission of any discussion of penalties implicitly excludes an outcome involving assessment of penalties. Moreover, GPI's argument is contrary to the purpose of SB 2, which is intended to recognize the challenges faced by retail sellers in seeking to comply with pre-2011 RPS requirements and to essentially "re-set" the RPS goals for retail sellers.

Finally, GPI's proposal to impose penalties for pre-2011 deficits (regardless of satisfaction of the "safe harbor" provision) is impractical. In order to assess penalties for pre-2011 deficits, the Commission, which tracks compliance with annual RPS targets, and the CEC, which verifies compliance with annual RPS targets, would be required to engage in accounting and verification efforts related to pre-2011 RPS compliance at the same time that both agencies are working to implement the comprehensive new RPS legislation set forth in SB 2. In addition, since, as the Commission has previously acknowledged, imposition of penalties for RPS

[8/] *See* GPI Comments, pp. 1-3.
[9/] *In re J.W.*, 29 Cal. 4th 200, 209 (2002).

procurement deficits is not automatic,[10] it would be necessary for the Commission to initiate enforcement proceedings against each retail seller with a deficit, which would involve evaluation of the circumstances related to the deficit and would likely be complex and time-consuming. Given the clear legislative intent of SB 2, and § 399.15(a) in particular, and the significant administrative burden associated with imposition of penalties for pre-2011 deficits, GPI's proposal regarding penalties for pre-2011 deficits should be rejected.

SDG&E notes that while it is unable, given applicable space limitations, to respond to the comments filed by all parties, it supports the argument offered by Southern California Edison Company ("SCE") regarding retirement of RECs.[11] SCE notes that the PD "correctly rejects arguments that RECs acquired in one compliance period must be retired in that period."[12] SDG&E agrees with the analysis presented by SCE and urges the Commission to adopt the PD's finding in its final decision.

For the reasons set forth above and in SDG&E's opening comments, the PD should be modified in accordance with the recommendations made by SDG&E.

Respectfully submitted this 21st day of May, 2012.

/s/ *Aimee M. Smith*
AIMEE M. SMITH
101 Ash Street, HQ-12
San Diego, CA 92101
Phone: (619) 699-5042
Fax: (619) 699-5027
E-mail: amsmith@semprautilites.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

[10] *See* D.03-12-065, *mimeo*, p. 8.
[11] SCE Comments, pp. 7-8.
[12] *Id*. at p. 7.

AFFIDAVIT

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY ON THE PROPOSED DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 21st day of May, 2012, at San Diego, California

/s/ Hillary Hebert
Hillary Hebert
Partnerships and Programs Manager
Origination and Portfolio Design Department