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 R.11-05-005

REPLY COMMENTS OF THE GREEN POWER INSTITUTE ON THE PROPOSED DECISION OF ALJ SIMON

May 21, 2012

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Pursuant to Rules 14.3 and 14.6 of the Commission's Rules of Practice and Procedure, in Proceeding R-11-05-005, the **Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program**, the Green Power Institute, a program of the Pacific Institute for Studies in Development, Environment, and Security (GPI), provides these *Reply Comments of the Green Power Institute on the Proposed Decision of ALJ Simon*. We address issues brought up by several parties in their *Opening Comments*.

Compliance and Enforcement

In their *Opening Comments*, SCE presents a detailed case in support of the PD's interpretation of §399.15(a) of the California Public Utilities Code, an interpretation that we believe goes well beyond the letter or the intent of the statute. SCE argues:

> The transition between the 20% and 33% RPS programs is expressly dealt with in Public Utilities Code Section 399.15(a), which provides that "[f]or any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article." Correctly interpreting the plain language of this statutory provision, the PD concludes that "the safe harbor in effect wipes out all prior [annual procurement target ("APT")] deficits, no matter how large" and that "attaining the safe harbor ends the obligations of the retail seller under the prior APT requirements." [SCE *Opening Comments*, pg. 3.]

The plain language of the statutory provision states that for a retail seller qualifying for the safe harbor, "the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article." The procurement requirements "pursuant to this article" that are being referred to are the procurement requirements for the period 2011 – 2020. The deficits referred to are from the pre-2011 phase of the RPS program. The plain language of the statute simply says that for retail sellers qualifying for the safe harbor, deficits from the first phase of the program are not

carried forward into the SB 2 (1X) phase of the program. That is what the statute cited by SCE says, and that is all that it says. It says nothing about how to settle the deficits in the old program. There is certainly no mention of wiping out prior deficits, or of ending all obligations of the retail seller under the prior APT requirements. SB 2 (1X) makes no attempt to retroactively change the first phase of the state's RPS program, expressly or implied. It certainly does not negate it. The rules for enforcing the old program were established when the old program was launched in 2003. As far as we know, they are still in effect and should be used, should any of the retail sellers under the Commission's jurisdiction fail to fulfill their obligations.

SCE argues that in addition to following the plain language of the statute, the Commission can interpret the statute based on the legislature's intent, which they purport to know, due to their having been a part of the process that created the legislation. We take strong exception to SCE's claim to know what the legislature's intent was in passing SB 2 (1X), beyond what is written in the legislation. The fact is that the legislative process results from the input of a large number of people, many of whom have differing opinions about what they think the legislation does, or should do. The final document is the result of many compromises and rewrites, and what matters is what the final document says, not what one or more of the parties that participated in the process thinks it means, beyond what it says. We urge the Commission to follow the plain language of the statute, without embellishment.

Enforcement is never a pleasant exercise, as the foregoing discussion demonstrates. However, without real enforcement, an ambitious program like the RPS has little chance of achieving its goals. We join with CalWEA in urging the Commission to deal with the issue of developing enforcement provisions for the 33-percent RPS program as expeditiously as possible.

Annual Reporting

The GPI favors that earliest possible reporting date within the calendar year for the new, annual RPS compliance reports, in order to provide the public with the information it needs in a timely manner. The GPI proposed a reporting date for the IOU RPS Procurement Reports of the first of May, while the IOUs proposed August first, and a variety of other parties proposed dates within this range. The PD adopts a June first date. PG&E and SCE are both urging the Commission to push the date back to July first. We urge the Commission to resist this request. There is no requirement that the data submitted in these reports be final data, accurate to six significant digits. Any time that a utility gets updated or corrected data, it should include those updates in the next annual report. Delaying the reporting date beyond June first in order to allow for an imperceptible improvement in data accuracy is a bad idea.

We agree with DRA that the final Decision should make explicit that the annual reports should include all of the information that previously was included in both annual reports from the previous phase of the program, including all relevant information from the previous reporting spreadsheet, and the project development status reports.

Dated May 21, 2012

Respectfully Submitted,

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VERIFICATION

I, Gregory Morris, am Director of the Green Power Institute, and a Research Affiliate of the Pacific Institute for Studies in Development, Environment, and Security. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Reply Comments of the Green Power Institute on the Proposed Decision of ALJ Simon*, filed in R.11-05-005, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on May 21, 2012, at Berkeley, California.

Gregory Morris