

**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 LARGE-SCALE SOLAR ASSOCIATION  
ON THE PROPOSED DECISION OF ALJ SIMON SETTING  
COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO  
STANDARD PROGRAM**

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May 21, 2012

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Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Large-scale Solar Association (LSA) respectfully submits these reply comments to address points raised in opening comments of The Utility Reform Network and Coalition of California Utility Employees (TURN/CUE), the California Municipal Utilities Association (CMUA), and Shell Energy (Shell) on Administrative Law Judge Simon's April 24<sup>th</sup> Proposed *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program* (Proposed Decision or PD).

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**I. The Commission Should Modify the Proposed Decision to Place Restrictions on the Retirement of Renewable Energy Credits (RECs) from Short Term Contracts, in addition to Category 3<sup>1</sup> RECs.**

In LSA's opening comments, we raised concerns that the Proposed Decision would effectively allow Category 3 RECs to be carried forward by retail sellers in contravention of the statutory provisions, which prohibit Category 3 RECs from counting towards excess procurement.<sup>2</sup> In their opening comments, TURN/CUE point out that the PD similarly would permit a retail seller to avoid the statutory restrictions of excess procurement of short-term contracts.<sup>3</sup> Section 399.13(a)(4)(B) requires that the Commission "deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration" in determining the excess procurement for a compliance period. However, as written, the PD places no restrictions on the retirement of RECs from short-term contracts, aside from the 36-month time limit on the retirement of RECs for RPS compliance included in Section 399.21(a)(6).

As LSA discussed in its opening comments, Section 399.21(a)(6) must be harmonized with the other restrictions on RECs used for RPS compliance in the statute and is appropriately treated as a limit on REC retirement, as opposed to an affirmative

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<sup>1</sup> Category 3 refers to procurement meeting the criteria of Public Utilities Code Section 399.16(b)(3), while Category 1 refers to procurement meeting the criteria of Section 399.16(b)(1) and Category 2 to procurement meeting the criteria of Section 399.16(b)(2). Unless otherwise noted, all statutory references refer to the Public Utilities Code

<sup>2</sup> Comments of the Large-scale Solar Association on the Proposed Decision of ALJ Simon Setting Compliance Rules for the Renewables Portfolio Standard Program (May 14, 2012), p. 2-5 (LSA Opening Comments).

<sup>3</sup> Opening Comments of The Utility Reform Network and the Coalition of California Utility Employees on the Proposed Decision of Administrative Law Judge Simon Setting Compliance Rules for the Renewables Portfolio Standard Program (May 14, 2012), p. 2-5.

determination that all RECs are eligible for compliance without limitation as long as they are retired within a 36-month time frame. LSA concurs with TURN/CUE that, as written, the PD would allow sellers to undermine the statutory prohibitions from treating both short-term and Category 3 RECs as excess procurement. LSA urges the Commission to adopt appropriate rules on REC retirement to effectuate the statutory intent of Section 399.13(a)(4)(B).

## **II. The Proposed Decision Should Ensure that Pre-2011 RECs are Appropriately Accounted for in the Retail Sellers' Closing Reports.**

In their opening comments, TURN/CUE raise a troubling issue - that retail sellers with net deficits could avoid the offsetting procedure established in the Proposed Decision and carry forward RECs that should have been counted towards pre-2011 RPS compliance obligations. The Proposed Decision describes a transition process<sup>4</sup> where retail sellers prepare a closing report to determine a net deficit or surplus under the pre-SBx1 2<sup>5</sup> program. The PD permits prior banked procurement in excess of the Annual Procurement Target to be carried forward and used for compliance under the new SBx1 2 framework.<sup>6</sup>

In their comments, TURN/CUE note that the PD focuses on the date of REC retirement as the critical factor for determining whether a REC is credited towards a

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<sup>4</sup> Proposed Decision, p. 17-19.

<sup>5</sup> Senate Bill 2, first extraordinary session (Simitian, 2011) .

<sup>6</sup> Proposed Decision, p. 30-31. While we do not dispute this Proposed Decision's determination here, LSA notes that this discussion should not be read as support for this position. We note our earlier position that the statute did not contemplate for banks to be carried forward. *See* Comments of the California Wind Energy Association and the Large-scale Solar Association on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program (August 30, 2011), p. 15-16.

particular compliance obligation in the SBx1 2 program. This timing issue is troubling, as retail sellers may have delayed REC retirement in recent years. Thus, a retail seller may retire in 2011 or later a REC that was intended to count towards a pre-2011 obligation. For a retail seller with net deficits prior to 2011, the REC retirement date should not determine whether the REC is counted in the pre-2011 closing report and used to offset deficits versus used towards compliance obligations in the SBx1 2 program. If the closing report is not required to reflect late-retired RECs, the retail seller could avoid the Proposed Decision's transition process and inappropriately carry forward RECs that should have been counted in the closing report. LSA urges the Commission to resolve this issue and ensure that pre-2011 RECs are appropriately addressed in the closing reports.

### **III. The Proposed Decision Correctly Determined the Statute Does Not Provide Authority for Increasing the Category 3 Allowance Beyond the Statutory Caps.**

The Proposed Decision discusses the language of Section 399.16(e), which provides the Commission with authority to "reduce a procurement content requirement of subdivision (c) to the extent the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15" (emphasis added). The PD recognizes that this section addresses only a "reduction" of a quantitative portfolio

content requirement. The PD correctly concludes that this section does not authorize the Commission to increase the limit on Category 3 products.<sup>7</sup>

Section 399.15(b)(5) gives the Commission authority to waive the minimum quantity RPS procurement requirements for different compliance periods in certain enumerated circumstances. In its comments, CMUA asserts that the purpose of 399.16(e) is clear - that it "serves as an intermediate flexible compliance mechanism for a retail seller that meets one of the conditions of section 399.15(b)(5) but where the retail seller wishes to comply to the extent possible, rather than simply seeking a full exemption." LSA notes that this interpretation conflates the tests for a waiver for the overall RPS quantity obligation under Section 399.15(b)(5) and a waiver for the procurement quantity requirement under 399.16(e), which are different. The waiver determination relies on a finding that the triggering condition will prevent compliance with the obligation in question; Sections 399.15(b)(5) and 399.16(e) address different compliance obligations (i.e., overall RPS amount vs. portfolio category content). For instance, one could envision a situation in which the Commission finds that one of the circumstances enumerated in Section 399.15(b)(5) (A-C) will prevent compliance with the Category 1 minimum quantity requirement, but is not sufficient to prevent the retail seller from achieving its overall RPS obligation.

The PD encourages the procurement of RPS resources by treating the overall RPS procurement obligation separate from the obligations to meet the portfolio content

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<sup>7</sup> LSA requested clarification in its Opening Comments that the portfolio category content requirements for Categories 1 and 3 are separate compliance obligations. *See* LSA Opening Comments, *supra* note 2, p. 5-6.

category amounts established in Section 399.16(c). Further, by refusing to consider or issue waivers until after the compliance period has ended, retail sellers will be incentivized to make their best efforts to avoid noncompliance and the uncertainty over whether they would be subject to enforcement. CMUA's concern that retail sellers could procure less renewable energy if they are hoping to rely on waiver underscores the importance of designing a robust enforcement framework to ensure that retail sellers are appropriately incentivized to meet both the overall RPS goals and the portfolio content quantities.

#### **IV. The Proposed Decision Should Clarify that pre-June 2010 Procurement Should be Treated Separately from the Portfolio Content Categories for Compliance Purposes.**

The Proposed Decision includes Conclusion of Law Number 11, which states "In order to conform to statutory requirements and preserve value for retail sellers and ratepayers, retail sellers should be allowed to use contracts for RPS procurement signed prior to June 1, 2010 for all compliance purposes". Shell has requested that the PD explicitly permit pre-June 2010 contracts to be used to satisfy both over RPS procurement obligations and portfolio content category obligations, suggesting that any pre-June 2010 should be able to be used at the retail seller's election to count towards Category 1 regardless of whether the procurement actually meets the Category 1 requirements. This request is inappropriate and at odds with the statute. Shell's request would effectively allow retail sellers to treat all pre-June 2010 procurement as Category 1

and would eviscerate the portfolio balance requirements established in Section 399.16(b) and (c). To avoid any confusion on this point, LSA urges the Commission to clarify that pre-June 2010 procurement CANNOT be counted towards the portfolio content category requirements.

## CONCLUSION

LSA is generally supportive of the Proposed Decision. However, we believe the Proposed Decision should be amended to avoid situations where REC retirement could be adjusted to circumvent the statutory intent and the rules of the new program. In addition to the clarification requested in LSA's opening comments, we request that the Proposed Decision clarify that pre-June 2010 procurement cannot be counted towards the portfolio content categories established in Section 399.16. Further, we encourage the Commission to move expeditiously to solicit stakeholder feedback on outstanding enforcement issues and establish a complete compliance and enforcement framework for the RPS program.

Dated: May 21, 2012

Respectfully Submitted,

/s/ Kristin Burford

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## VERIFICATION

I, Kristin Burford, am the Policy Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare that the statements in the foregoing copy of *Reply Comments of the Large-scale Solar Association on the Proposed Decision of ALJ Simon Setting Compliance Rules for the Renewables Portfolio Standard Program* are true of my own knowledge, except as to the 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 that the foregoing is true and correct.

Executed on May 21, 2012 at San Rafael, California.

/s/ Kristin Burford

Kristin Burford

Policy Director, Large-scale Solar  
Association