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)

COMMENTS OF CALPINE POWERAMERICA-CA, LLC ON PROPOSED DECISION SETTING COMPLIANCE RULES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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May 14, 2012

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Pursuant to Rule 14.3 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Calpine PowerAmerica-CA, LLC ("CPA") submits these comments on the proposed decision ("Proposed Decision") setting compliance rules for the Renewables Portfolio Standard ("RPS") program. As discussed below, the Proposed Decision should be revised to include banked procurement for purposes of calculating whether a retail seller has satisfied the "14% of retail sales in 2010" safe harbor requirements.

I. INTRODUCTION

CPA supports the purpose and goals of Senate Bill ("SB") 2(1x) to increase RPS procurement over the next decade and appreciates the challenges faced by the Commission to address the myriad of issues created by the transition from the previous RPS program to the current program under SB 2(1x). These challenges include ensuring that the significant steps many retail sellers undertook to comply with the now superseded "20% by 2010" RPS procurement obligation are appropriately accounted for and valued under the new program.

As a general matter, CPA supports provisions in the Proposed Decision to "preserve the value for RPS compliance of procurement from contracts signed prior to June 1, 2010" by

allowing retail sellers to carry forward "previously banked procurement from [such] contracts."[1] The Proposed Decision, however, inexplicably departs from this approach when addressing the 14% "safe harbor" provision in SB 2(1x). Specifically, the Proposed Decision would find that it is "not reasonable to include procurement from prior years that was banked for future RPS compliance in the '14% of retail sales in 2010' required for the safe harbor."[2] Disallowing the use of banked procurement for purposes of the safe harbor denigrates the otherwise beneficial procurement activities undertaken by retail sellers prior to June 1, 2010 and is inconsistent with preserving the value of such procurement.

II. THE PROPOSED DECISION SHOULD BE REVISED TO INCLUDE BANKED PROCUREMENT FOR PURPOSES OF SATISFYING THE SAFE HARBOR

A retail seller was allowed to "bank" procurement under the prior RPS program when it procured RPS eligible resources in excess of its annual procurement target ("APT"). In essence, banked procurement reflects a retail seller "getting ahead of the compliance curve" by proactively procuring RPS resources that were delivered to its customers beyond annual minimum compliance amounts. Thus, for compliance purposes, banked procurement was treated the same as procurement undertaken during the actual compliance year and "could be used to meet the APT for a particular year" in the future.[3]

The ability to use banked procurement to meet a future APT compliance obligation is a feature that distinguishes banked procurement from other flexible compliance mechanisms, such as deferrals. Because deferrals represent a promise to procure excess RPS resources in the future, CPA agrees with the Proposed Decision that deferrals should not be included for purposes of satisfying the safe harbor. Specifically, at this point in time, the potential benefits of the

[1] Proposed Decision at 31.
[2] Proposed Decision at 21 (footnote omitted).
[3] Proposed Decision at 14.

deferred procurement have not been realized. Furthermore, because the previously deferred procurement can be used to satisfy a future compliance obligation, the value to the retail seller is not lost; but rather, will be realized when deliveries from the RPS resource occur.

In contrast, the potential benefits associated with banked procurement have been realized in that the RPS generation has been procured and already delivered to a retail seller's customers. Thus, by not including banked procurement for purposes of satisfying the safe harbor, the Proposed Decision would penalize a retail seller for procuring in advance of its APT requirements – behavior that was encouraged under the prior RPS program. This could result in the perverse outcome where a retail seller that simply procured 14% of retail sales in 2010 receives the benefits of the safe harbor notwithstanding that the retail seller may have had substantial deficits in prior years; while a retail seller that had banked significant procurement in prior years and *had no prior deficits* may not take advantage of the safe harbor because it cannot use these banked resources to satisfy the 14% trigger.

The Proposed Decision should be revised to recognize the benefits and value associated with banked procurement undertaken by retail sellers in advance of APT obligations.

Respectfully submitted,

/s/

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Dated: May 14, 2012

VERIFICATION

I am the attorney for the Calpine PowerAmerica-CA, LLC, and I have been authorized to make this verification on the behalf of Calpine PowerAmerica-CA, LLC. Said party is located outside of the County of San Francisco, where I have my office, and I make this verification for said party for that reason.

I have read the foregoing document and based on information and belief, believe the matters in the application to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed May 14, 2012, at San Francisco, California.

/s/
Jeffrey P. Gray