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)

MOTION OF PLACER COUNTY AIR POLLUTION CONTROL DISTRICT TO REOPEN THE RECORD AND MOTION FOR OFFICIAL NOTICE OF FACT REGARDING JANUARY 2012 PG&E SMALL POWER PRODUCTION SEMI-ANNUAL REPORT

Pursuant to Rule 13.14 and Rule 13.9, the District hereby requests that the Commission reopen the record in order to take official notice of the current under 3 MW contracts in place within IOU service territories.

MOTION OF PLACER COUNTY AIR POLLUTION CONTROL DISTRICT FOR REHEARING OF D. 12-05-035

Pursuant to Rule 16.1, the District hereby requests a rehearing on the issue of whether or not existing contracts entered into the current FiT program should be included for the purposes of satisfying the new 750 MW cap implemented under the Final Decision issued on May 31, 2012. The District can demonstrate that such inclusion of existing contracts is not consistent with the intent of legislation, and the practical implication of such an interpretation would allow for one of the three IOU's to have virtually no new requirement for base load power procurement under the new FiT program. This motion is timely, and the District respectfully requests an expeditious resolution of this matter.

Basis for reopening of the record, inclusion of PG&E Semi-Annual Report as an official record within the proceeding, and re-hearing on the Decision issued May 31, 2012.

The District's issue stems from the paragraph within the decision found at the top of page 77 of the Final Decision. Within that paragraph, the Commission states "We find that all capacity already under contract within the existing FiT program must be subtracted from each

utilities' total capacity allocation." If that interpretation stands, then, as a result, PG&E will have either zero, or possibly up to 9 MW of capacity within their base load power category to fulfill under the new program. This is vastly less capacity than what the Commissioners were told would be available during this proceeding and would severely limit any potential forest biomass development in Northern California.

There is nothing within Section 399.20, or more specifically within Section 399.20(f), that states that already existing contracts should be subtracted from the new 750 MW capacity allocation. The legislation describes that every kilowatt hour of electricity purchased will count towards meeting the IOU's RPS and resources adequacy requirements under Section 380 (within Subsections h and i), but it does not specify that previous executed contracts will be included within the allocation. Based on the level of specificity that the legislature undertook within other sections of this statute, it is clear that there was no overt intention to count existing contracts within the new capacity allocation. And, as a matter of public policy, they should not be included.

The CPUC has broad authority to interpret legislation. In SDG&E v. Superior Court[1] the Court stated that the Commission has far reaching duties, functions and powers. The California Constitution, Article XII Sec. 1 6, confers broad authority, and that those powers are not restricted to those expressly mentioned in the constitution: 'the legislature has plenary power, unlimited by the other provisions of the constitution... to confer additional authority and jurisdiction on the Commission.'[2] The court goes on to cite Section 701 of the Public Utilities Code, and then state that "the Commission's powers are not limited to those expressly conferred on it: the legislature further authorized the Commission to 'do all things', whether specifically designated within the Public Utilities Code, which are necessary and convenient in the exercise of its jurisdiction over public utilities."[3] Based on this authority, it is clear that silence within a statute is not a basis for the CPUC to claim any particular legal outcome; rather the policy implications of the Commission's choices should be carefully considered.

[1] 13 Cal.4th 893, p. 915
[2] Id.
[3] Id @ p. 916.

The policy basis for concluding that the current contracts should be included within the new program leads to an absurd outcome. After reviewing the Pacific Gas and Electric Cogeneration and Small Power Production Semi Annual Report issued January of 2012, the District has calculated that there are 73.7 MW of base load power being produced by <3 MW facilities within the PG&E territories. (If you determine that co generation does not fall within the base load power category, then there is 63.2 MW in production.) Taking into consideration the total amount of capacity required of PG&E as 218.8 MW and dividing that number into thirds for each of the three categories results in a base load requirement amount of 72.9 MW. If the existing contracts are subtracted from this capacity, there would be no new requirement to procure any base load power within PG&E territory. (If you do not include co generation as a base load source, then there is only 9.7 MW available under the program). Either of these amounts (zero or 9.7 MW) are unacceptable. The intent of the legislation and the intent of each and every Commissioner at the hearings in which this item was discussed was clear; base load renewable power production was crucial in satisfying the legislative and public policy mandate of 399.20. It is unfortunate that the consequence of the Commission's Decision to include existing contracts within the new program was not included within materials provided to the Commissioners. As it stands now, the District now must ask the Commission to address this problem, and it hopes that it can do so expeditiously.

There are many potential current small biomass facilities that are in various stages of development that are waiting for this program to begin. (Please see attachment "A"). Before the District discovered this problem within the PG&E service territory, the District was planning on making a motion to request the Commission develop the contract template for the program and run the auction simultaneously so that potential forest biomass facilities could begin operations sooner and possibly take advantage of some federal tax credits (The Producer Tax Credits – which expire at the end of 2013 – and Investment Tax Credits) that can provide significant financial support for renewable power projects by offering valuable incentives for equity partners by reducing the risk of investing into new technologies. Unfortunately, this problem has arisen and cannot be ignored. The District is not looking for delay, but rather quick, well thought out resolution.

The District would caution the Commission in taking the position that existing contract capacities should be spread out evenly though out the product categories regardless of the contract's underlying energy production type. The Commission staff should review all <3 MW contracts that exist within all three IOU territories and assess how those contracts would affect total capacity allocations in order to determine the consequences for each product category. Allowing for contracts that are within

one product category to impact the capacity of another product category is contrary to what one would expect and may negatively impact some other categories and those power producers.

Ultimately, the District believes that the best resolution is to exclude existing contracts from the capacity requirements required under 399.20(f). As existing contracts expire, those producers may then participate in the new program. Of course, the Commission should also do an analysis of the expiration dates of existing contracts so that they have a full understanding of the effect those producers will have on the market demand within the program as well. That work should be done regardless of the issue regarding existing contract inclusion, because when those existing contracts expire, they will have a significant ability to underbid any new emerging technologies. As such, the Commission may want to take official notice of all three of the semi annual reports filed by the IOUs in January of 2012.

CONCLUSION

PLACER COUNTY AIR POLLUTION CONTROL DISTRICT respectfully requests the Commission grant the motions for reopening the administrative record in order to take official notice of the Small Power Production Semi Annual Reports filed by all three IOUs dated January 2012 pursuant to Rule 13.14 and 13.9. The District also respectfully requests the Commission grant the motions for rehearing in order to resolve the problem within the Final Decision submitted on May 31, 2012, as stated within this motion pursuant to Rule 16.1.

DATED: June 21, 2012

Respectfully submitted,

/s/ Christiana Darlington

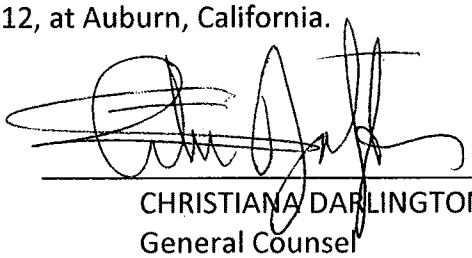
CHRISTIANA DARLINGTON
General Counsel

VERIFICATION

I am an officer of the non-profit organization herein, and am authorized to make this verification on its behalf. The statements in the foregoing document 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.

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

Executed this 21st day of June, 2012, at Auburn, California.



CHRISTIANA DARLINGTON
General Counsel