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)

OPENING COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE SECOND ASSIGNED COMMISSIONER'S RULING ISSUING PROCUREMENT REFORM PROPOSALS AND ESTABLISHING A SCHEDULE FOR COMMENTS ON PROPOSALS

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I. Introduction and Summary

The Union of Concerned Scientists ("UCS") thanks the Commission for the opportunity to provide comments on the *Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals* ("Second ACR"), filed on October 5, 2012. UCS continues to appreciate the Commission's efforts to enhance the efficiency and transparency of the procurement process for renewable energy under the Renewables Portfolio Standard ("RPS") program, and offers the following comments, which are summarized below:

- UCS supports the Commission's proposal to streamline the approval process for purchase or sales contracts of less than five years.
- The Commission should not automatically reject an RPS contract on the basis of perceived need.
- The Commission should reconsider its proposal to classify all contracts that would deliver more than one percent of an IOU's total bundled sales as "non-standard."
- The Commission should not compare unbundled REC contracts to bundled procurement.
- The Commission should retain non-modifiable Standard Term and Condition 2, which defines the "Green Attributes" associated with a REC.

II. UCS supports the Commission's proposal to streamline the approval process for purchase or sales contracts of less than five years.

UCS does not object to a Tier 1 review process for contracts of less than five years *per se*, but suggests that the discussion about streamlining the approval of short-term contracts is really about expediting the approval of contracts with existing renewable energy projects. In general, unless an existing project is planning to repower or change its technology, the Commission should not have to analyze its project viability, environmental impact, or price reasonableness to the degree that is appropriate for new projects, because existing projects have already been constructed and possess real world data for operating costs. UCS explains its objections to applying the "need authorization" criterion to other approval processes proposed in the Second ACR, but in the limited case for sales and purchase contracts of less than five years, UCS supports the expedited Tier 1 review process using the Standards of Review ("SOR") outlined in Table 1.

III. The Commission should not automatically reject an RPS contract on the basis of perceived need.

It appears that all of the RPS contract approval pathways contained in sections 4.3, 4.4, and 4.5 of the Second ACR require that generation from a proposed contract be consistent with the renewable net short ("RNS") approved in the IOU's most recent RPS procurement plan.[1] The August 2, 2012 Commission Ruling ("August 2 Ruling") that adopted the renewable net short calculation defines the RNS as "the amount of new renewable generation necessary for retail sellers to meet or exceed the renewable target."[2] Consistency with the latest RNS calculation is part of the proposed SOR for all types of contracts, and if a proposed contract does not meet the SOR, the Commission will reject the contract:

[1] *See* Table 1, Table 2, Figure 2, Table 3, Table 4, Table 5, and Table 6 of the Second ACR.
[2] Administrative Law Judge's Ruling (1) Adopting Renewable Net Short Calculation Methodology (2) Incorporating the Attached Methodology into the Record, and (3) Extending the Date for Filing Updates to 2012 Procurement Plans, August 2, 2012, p.2.

> "If a PPA from a competitive solicitation that is not eligible for expedited review is not consistent with these SOR[3], then the contract will be rejected…Alternatively, the filing IOU can submit a PPA via Application and it will be reviewed with SOR[4] proposed in Subsection D.[5]

Since the SOR proposed in Subsection D also require that a contract's generation be consistent with the latest RNS, UCS believes the Commission has proposed to automatically reject any contract that would increase an IOU's renewable investment levels beyond what is required in the RPS law. Aside from requiring that short-term contracts seeking to use a Tier 1 approval process meet the "need authorization," which UCS supports in section II of these comments, UCS strongly objects to the Commission prohibiting IOUS from voluntarily investing in renewables beyond what is legally required.

The first reason why UCS objects to an automatic contract rejection based on the RNS is because the calculation is inexact, subjective, and likely to change over time. The August 2 Ruling explains that calculating the RNS requires forecasting both the renewable energy target (based on a percentage of forecasted retail sales) and the renewable energy supply.[6] The Final RNS Methodology, included as Attachment A to the August 2 Ruling, clarifies that this calculation "places the responsibility on the retail seller to calculate the RNS based on its internal and confidential portfolio analysis that takes into account both quantitative and qualitative parameters in determining project-specific risk."[7] All of these analyses will require IOUs to make assumptions about project risk and failure, an appropriate margin of over-procurement, and project timelines. There is no question that the IOUs will fail to predict the performance of their RPS portfolio with 100 percent accuracy. In addition, Decision 12-11-016, which adopted the

[3] *See* Table 2: Proposed Standards of Review for Power Purchase Agreements from Solicitations, p.19.
[4] *See* Table 5: Standards of Review for Non-Standard RPS Power Purchase Agreements, p.31.
[5] Second ACR, p.20
[6] *Id.*
[7] *Id.*, Attachment A, p.3

IOU's 2012 procurement plans and incorporated the August 2 Ruling on the RNS, admits that the Commission failed to validate significant aspects of the IOUs' RNS methodology:

> The [August 2] ruling instructed the utilities to rely upon their own margin of over-procurement for their updated 2012 RPS Procurement Plans as part of the RNS methodology adopted by the August 2, 2012 ruling. *The ruling made no finding on the reasonableness of each utility's margin of over-procurement.* The ruling also did not address § 399.13(a)(4)(D), the statutory provision relating to minimum margin of procurement above the minimum procurement level necessary to comply with the RPS Program and to mitigate the risk that renewable projects planned or under contract are delayed or canceled. *Likewise, the ruling made no finding on the reasonableness of each utility's success rate, which is also incorporated in the RNS methodology adopted by the August 2, 2012 ruling.*[8]

For this reason alone, UCS believes that it is not reasonable for the Commission to automatically reject a contract based on such an inexact calculation.

In addition, UCS believes that automatically rejecting a contract based on the position that the electricity is not "needed" places an effective ceiling on the amount of renewable energy investments an IOU may make for its RPS program, which is inconsistent with the RPS law. California Public Utilities Code Section 399.15(b)(3) is clear that although the Commission cannot require IOUs to invest in renewables beyond 33 percent of retail sales, it cannot prevent an IOU from doing so on its own: "The commission shall not require the procurement of eligible renewable energy resources in excess of the quantities identified in paragraph (2). A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements." By enacting review standards that automatically reject a contract if it is inconsistent with an IOU's latest RNS calculation, the Commission is effectively preventing an IOU from making voluntary renewable energy purchases for its RPS.

[8] D.12-11-016, pp.8-9. (*emphasis added*)

UCS first cautioned the Commission against treating the 33 percent RPS as a *de facto* cap on renewable investments in its comments preceding the June 12, 2012 RNS workshop. In those comments, UCS supported calculating the RNS because it helps stakeholders understand the state's progress towards meeting the 33 percent RPS by 2020 and informs long-term procurement planning efforts.[9] In those comments, UCS also pointed out that an IOU may need the ability to invest in renewables beyond what is required in the RPS law to comply with AB 32 greenhouse gas ("GHG") emission reduction regulations. The California Air Resources Board ("CARB") must update its AB 32 Scoping Plan in 2013 and the Commission should not preempt the ability of CARB or other state agencies from considering how renewable energy may play a role to meet GHG reduction requirements.

UCS believes that the Tier 3 contract approval process provides adequate opportunities for the Commission, IOUs, and other stakeholders to exchange information about whether an RPS contract is needed. Therefore, the Commission should remove "Need Authorization" from the list of required SOR for all contracts except purchase and sales contracts of less than five years.

IV. The Commission should reconsider its proposal to classify all contracts that would deliver more than one percent of an IOU's total bundled sales as "non-standard."

The Second ACR proposes a set of SOR to guide the approval of contracts that are beyond the scope of the Commission's advice letter process. These include contracts that appear to be relatively more expensive, or propose using a technology that is not commercially proven. Notably, this process provides an alternative evaluation path for contracts that fail to meet each

[9] UCS Pre-Workshop Comments on Renewables Net Short Position Calculation, June 1, 2012, p.1.

of the SOR outlined in Section 4.4 A through 4.4 C except for contracts that fail to meet the "Need Authorization." This continues to be a prerequisite for contract approval, which UCS opposes and explains in detail in the preceding paragraphs.

The Second ACR proposes to treat any contract that would deliver more than one percent of an IOU's total bundled sales in its first full year of deliveries as a non-standard contract subject to the SOR outlined in Table 5.[10] While UCS understands the Commission's desire to shine a brighter light on contracts that appear non-traditional or relatively expensive, automatically triggering the non-standard SOR based on the impact of a contract's contribution to an IOU's RPS portfolio will place it under a heightened level of scrutiny based on the buyer of the electricity. Since one percent of San Diego Gas and Electric's ("SDG&E") total bundled sales is significantly different number of GWh than one percent of Southern California Edison's ("SCE") total bundled sales, the same contract may trigger the non-standard SOR if it bids with SDG&E and not trigger the SOR if it bids with SCE. The Commission may want to consider removing this trigger, given the fact that the Tier 3 advice letter process allows for plenty of opportunity for stakeholders to discuss the reasonableness of a contract's size relative to an IOU's overall RPS portfolio.

V. The Commission should not compare unbundled REC contracts to bundled procurement.

Section 4.5 of the Second ACR asks whether it would be reasonable to compare unbundled RECs to bundled procurement when reviewing unbundled REC contracts.[11] While UCS supports the Second ACR's proposal to assess the reasonableness of unbundled REC prices

[10] Second ACR, p.30.
[11] Second ACR, p.35, Question 21.

against shortlisted bids from the most recent annual RPS Solicitation and all unbundled REC contracts executed in the prior 12 months, UCS does not believe it makes sense to compare unbundled RECs to bundled procurement. Since Section 399.16 of the Public Utilities Code establishes portfolio content categories for the RPS and treats bundled procurement differently than unbundled RECs, these transactions will have different compliance values in the RPS market that will impact prices. For this reason, it would not make sense to reverse engineer a REC price from a bundled contract by estimating which portion of the price is the electricity and which is the "green premium." The price difference between a bundled contract and an unbundled REC may have more to do with its portfolio content categorization than a phantom "green premium."

VI. The Commission should retain non-modifiable Standard Term and Condition 2, which defines the "Green Attributes" associated with a REC.

Section 5.2 of the Second ACR proposes to reform or entirely remove the non-modifiable Standard Term and Condition 2 (STC 2), which defines "Green Attributes" in RPS contracts.[12] The Commission provides no information for why reforming or removing STC 2 is necessary or would improve the RPS procurement process. In addition to the lack of evidence supporting the need for such reform, UCS does not support modifying the current definition of "Green Attributes" at this time because the certainty created by STC 2 helps to establish a more liquid REC market, reduces transaction costs for market participants, and protects the integrity of how RECs are used for RPS compliance in California, as well as in other RPS programs in the WECC.

[12] Second ACR, at pp. 38-39.

A strong, standardized definition of Green Attributes, which includes "any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants"[13] allows RECs within the same portfolio content categories to trade interchangeably. This characteristic is important for an efficient and liquid market, which provides utilities with RPS compliance flexibility and helps to lower compliance costs. Buyers and sellers must be able to rely on the fact that unbundled RECs from a wind farm in Montana can be treated the same as the unbundled RECs from a solar array in the Central Valley. By removing STC 2, the Commission would force buyers and sellers to negotiate the attributes included in every new contract and allow counterparties to pick and choose from an a la carte menu of benefits. This would result in different classes of RECs with varying levels of legal weight and enforceability, and a more time-intensive and subjective contract review and approval process at the Commission. This would raise RPS procurement transaction costs and costs for ratepayers, and stoke market confusion and uncertainty.

A clear and standardized definition of Green Attributes not only supports the efficiency and integrity of California's RPS program; it has a unifying impact on REC markets throughout the WECC, given the relative size and demand of the California market. UCS is concerned that removing STC 2 will not only add confusion and costs to REC transactions, but increase the opportunities for entities to manipulate RPS transactions for private interests at the expense of ratepayers. An example of where this almost occurred is in Washington State, where a utility attempted to exploit a section of the state's RPS regulation by attributing the generation of one renewable MWh towards the compliance obligation of two separate utilities. The Washington State RPS allows utilities to count RECs generated by renewable energy facilities

[13] RPS Standard Term and Condition 2

that were constructed using a qualifying apprenticeship program as 1.2 times a REC's base value. This "extra-credit" is often called a "multiplier." On September 13, 2011, Puget Sound Energy, Inc. (PSE) filed a Petition for a Declaratory Order with the Washington Utilities and Transportation Commission, seeking an interpretation of how "extra credits" associated with the apprentice labor multiplier could be used.[14] PSE argued that because the apprenticeship credit is in addition to the REC value and is not an energy or environmental attribute that accompanies a REC, the utility should be allowed bifurcate the REC from the multiplier for separate RPS compliance purposes. In other words, it would be possible for a Washington utility to benefit from the multiplier by retaining the "extra" 0.2 MWh for its own RPS program, but sell off the REC associated with the "extra credit" project to another utility. Although PSE did not directly state that it contemplated selling RECs stripped of their multipliers to California, its petition implies that intent:

> Once a megawatt-hour of renewable energy is generated from such facility, it can be counted at one and two-tenths its value. The Act does not foreclose, or address in any way, the qualifying utility's ability to sell the one and two-tenths credit—either in total or bifurcated into a separate extra credit and a separate REC. *PSE could sell the REC to an out of state utility that may pay a premium price for the REC.* To the extent PSE does not need the remaining two-tenths extra credit to meet its renewable energy target, it should be permitted to sell the extra credit to an in-state party who uses the extra credit to meet its Washington renewable energy target, or to another interested party.[15]

The Washington Utilities and Transportation Commission interpreted the relationship between RECs and attributes in a manner consistent with California's Green Attributes

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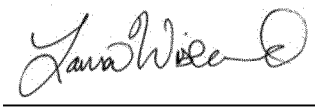
[14] Puget Sound Energy Petition for Declaratory Order on the Extra Credits for Apprentice Labor Provision RCW 19.285.040(2)(h), September 13, 2011, available at: http://www.utc.wa.gov/docs/Pages/DocketLookup.aspx?FilingID=111663

[15] Puget Sound Energy's Additional Statement of Fact and Law, U-111663, October 20, 2011, pp.5-6. *(emphasis added)*

definition, and denied PSE's petition on bifurcation on November 30, 2011.[16] California's current Green Attributes definition, which encompasses "*any and all* credits, benefits…..attributable to the generation from the Project…"[17] discourages creative RPS accounting by entities in other states that wish to sell into the California RPS market and helps ensure that California ratepayers receive the full value of the RECs purchased by their utilities. To further discourage market manipulation, the Commission could add a sentence to STC 2 to clarify that "all credits, benefits, emission reductions, offsets, and allowances…" means that attributes associated with renewable energy generation cannot be disaggregated and used for compliance with multiple RPS compliance obligations.

The clarity and uniformity of STC 2 also resolves the question of what a utility purchases when it purchases "null power." Since STC 2 stipulates that *all* credits and benefits transfer with the REC, it helps prevent a generator (utility or otherwise) in the West from making an environmental claim to the null power underlying a REC, which helps prevent double-counting.

Respectfully submitted,



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[16] Washington Utilities and Transportation Commission , Declaratory Order Interpreting RCW 19.285.040(2)(h), U-111663, November 30, 2011, p.13. Available at: http://www.utc.wa.gov/docs/Pages/DocketLookup.aspx?FilingID=111663

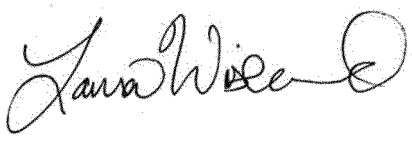
[17] RPS Standard Term and Condition 2 (*emphasis added*)

VERIFICATION

I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are 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 November 20, 2012 in Berkeley, California.



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