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 THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON THE STAFF RPS PROCUREMENT EXPENDITURE LIMITATIONS PROPOSAL

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the Staff Proposal for a Methodology to Implement Procurement Expenditure Limitations for the Renewables Portfolio Standard (RPS) Program. These Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure, the Administrative Law Judge's (ALJ's) Ruling of July 23, 2013 (July 23 ALJ's Ruling), and the ALJ's Ruling of September 9, 2013 (September 9 ALJ's Ruling), which, among other things, extended the time for filing these Comments to September 26, 2013.

I. INTRODUCTION

The July 23 ALJ's Ruling "presents for comment by parties a proposal by Energy Division staff for a methodology to set the procurement expenditure limitation (PEL) required by Section 399.15 (c) – (g)."[1] The proposed Staff PEL Methodology "and its broad rationale" are set forth in the ruling, with the subject "model," available on the Commission's website, incorporated by reference.[2] The July 23 ALJ's Ruling also poses 16 pages of questions regarding this proposal and the statute for party comment.[3]

[1] July 23 ALJ's Ruling, at p. 4.
[2] Id., at pp. 4-5.
[3] Id., at pp. 5, 27-43.

In doing so, the July 23 ALJ's Ruling first notes that "initial comments" and reply comments on the implementation of "this new mandate" of a PEL were filed by parties, including CEERT, on February 16 and March 1, 2012.[4] The July 23 ALJ's Ruling then indicates that several "important developments in the implementation of SB 2 (1X)," the 33% by 2020 RPS legislation, have occurred since the time those comments were filed.[5] Those actually listed, therefore, relate solely to decisions issued in this RPS rulemaking implementing various provisions of SB 2 (1X), like those at issue here.[6]

This approach, however, neglects *other* Commission decisions that have also been, and continue to be, made during this time on the broader issues of energy needs in proceedings like the Long Term Procurement Plan (LTPP) (R.12-03-014) and Resource Adequacy (RA) (R.11-10-023) rulemakings. CEERT believes that these other "developments" are very relevant to, and have great significance for, *any* determination made on the procurement of renewable generation, a Loading Order preferred resource. Thus, as detailed further below, the Commission must be vigilant in interpreting SB 2 (1X) consistent with established rules of statutory construction that require that its terms are given their plain meaning and applied in *context* to compliance with the RPS Program 33% mandate to avoid RPS-specific off-ramps or "targets" serving to inappropriately cap or constrain reliance on a Loading Order preferred resource to meet other resource needs.

CEERT addresses this important issue of statutory construction first below. In terms of responses to the multiple questions posed by the July 23 ALJ's Ruling regarding the Staff PEL Proposal, CEERT asks that its general perspective on that proposal identified in Section III below be taken into consideration in assessing the Staff PEL Proposal. CEERT also believes

[4] July 23 ALJ's Ruling, at p. 3.
[5] Id.
[6] Id.

that "alternatives" will be offered by other parties and reserves the right to comment on those alternatives on October 23, 2013.[7]

II.
APPLICATION OF PEL MUST BE LIMITED TO THE TERMS OF SECTION 399.15.

As confirmed by the Commission in D.11-12-052 and D.12-05-035, in implementing new SB 2 (1X) provisions (or those not yet implemented like the sections at issue here), the Commission must be "guided by the basic principles of statutory construction."[8] This significant point has been made routinely in CEERT's comments in this rulemaking as the Commission works through the implementation of SB 2 (1X) as to its new or amended provisions of the RPS Program law, including its Initial Comments on PEL implementation, which stated:

> "Key requirements of these 'basic principles' are (1) giving words used in a statute a plain and common sense meaning consistent with the statute's 'legislative purpose,' (2) ascertaining the intent of the legislature so as to effectuate the purpose of the law, and (3) construing 'a statute *in context*, keeping in mind the nature and purpose of the legislation,' including reference to 'the legislative history of the statute and the wider historical circumstances of its enactment.' As noted in D.11-12-052, the courts and Commission are to favor 'the construction that leads to the more reasonable result' consistent with the 'purpose of the legislation.' [Footnotes omitted.]"[9]

In applying these rules to the interpretation of Section 399.15, it is clear by its "plain terms" that its provisions governing "procurement expenditure limitations" are limited in application to procurement undertaken to comply with the RPS Program and its 33% mandate. What Section 399.15 and its subparts (i.e., (c)-(g)) do not apply to or restrict is procurement of renewable generation pursuant to other policy mandates (i.e., greenhouse gas (GHG) emission reductions) or other energy needs identified by the Commission in its Long Term Procurement

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[7] September 9 ALJ's Ruling, at p. 3.
[8] D.11-12-052, at pp. 6-7. See also, D.12-05-035, at pp. 10, 14.
[9] CEERT Initial Comments, at p. 2, citing *California Teachers Assn., supra*, 14 Cal.4th at 632; *Dyna-Med, Inc.* v. *Fair Employment Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387; *Squaw Valley Ski Corp.* v. *Superior Court,* (1992) 2 Cal. App. 4th 1499, 1511; and D.11-12-052, at p. 7, citing *Imperial Merchant Services, Inc.* v. *Hunt* (2009) 47 Cal.4th 381, 387-388.

Plan (LTPP) or Resource Adequacy (RA) proceedings. This point has already been made clear by the Commission in Decision (D.) 12-01-033 and, even more recently, in D.13-02-015, both of which require renewable generation to be procured on an *ongoing basis* as a preferred resource in the Loading Order to meet all energy needs, unlimited by any "targets" set on that procurement in another proceeding.[10] These directives are not referenced in the July 23 ALJ's Ruling.

Thus, by the specific terms of Section 399.15 (c)-(g), the Commission is to "establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources *used to comply with the renewables portfolio standard*."[11] It is important for the Commission to confirm this limitation on the use of the PEL to specific compliance with the 33% RPS mandate because this "cost limitation," if "insufficient to support" the utility's "projected costs of meeting the renewables portfolio standard procurement requirements," can allow the utility to "refrain from entering new contracts or constructing facilities beyond the quantity that can be procured within the limitation."[12]

The potential constraint created by the PEL on renewables procurement *undertaken for purposes of RPS compliance* is important to understand and to construe narrowly to prevent it from being interpreted as applying to procurement beyond the specific program addressed by this statute (33% RPS). Such a step is not only required by established principles of statutory construction, but avoids unnecessary or inappropriate conflicts with the Commission's determinations on the Loading Order. With reference again to D.12-01-033, which was not included among the "developments" identified in the July 23 ALJ's Ruling, the Commission has concluded that a utility's "obligation" to meet energy needs pursuant to the Commission's

[10] D.12-01-033, at p. 20; D.13-02-015, at pp. 10-11.
[11] PU Code §399.15(c).
[12] PU Code §399.15(f).

Loading Order of preferred resources is *not* "finite," but "ongoing," mandatory, and *unlimited* by any targets otherwise set for those resources, which include renewable generation. [13] Specific "to the *procurement of renewable power*," D.12-01-033 confirms that "the utility is under a *continuing obligation* to maximize its procurement of cost-effective renewable generation, *even if it has hit the target set by this Commission in another proceeding*."[14]

Even more recently, in the Commission's seminal D.13-02-015 authorizing "long-term procurement for local capacity requirements" (LCRs), the Commission made the groundbreaking finding that "preferred resources" are not only to be accounted for in reducing LCR or LTPP needs, but in *meeting* them as well. Thus, the Commission directed Southern California Edison Company (SCE) to meet a portion of its LCR by procuring capacity "through preferred resources consistent with the Loading Order in the Energy Action Plan."[15] Further, SCE's "solicitation process to procure authorized LCR resources" must be "consistent" with the Energy Action Plan, "which places cost-effective energy efficiency and demand response resources first in the Loading Order, followed by renewable resources," and a "significant aspect" of the review of resulting contracts "will be to ensure consistency with the Loading Order."[16]

Quite correctly, therefore, SCE in its 2013 RPS Procurement Plan stated with specific reference to D.13-02-015:

> "D.13-02-015 requires SCE to procure minimum amounts of gas-fired generation, preferred resources, and energy storage in the Western LA Basin sub-area. As SCE will explain in its LCR Procurement Plan, which will be submitted to Energy Division in response to D.13-02-015 on July 15, 2013, in the fourth quarter of 2013, SCE intends to conduct an LCR solicitation that is open to all technologies that can meet SCE's LCR needs. *This LCR solicitation will be open to renewable resources.*"[17]

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[13] D.12-01-033, at pp. 17 - 20.
[14] D.12-01-033, at p. 20; emphasis added.
[15] D.13-02-015, at p. 2.
[16] D.13-02-015, at p. 3.
[17] SCE 2013 RPS Plan, at pp. 10, 22 (n. 21), 32; emphasis added.

SCE also concludes: "To the extent SCE receives proposals for projects in those areas that are not selected in SCE's RPS solicitation based on LCBF selection criteria, SCE will consider the LCR value of these proposals using the LCR solicitation valuation methodology."[18]

Both with reference to the language of Section 399.15 and these decisions, it is clear that the Commission cannot and should not construe the PEL as a means of capping or limiting a utility's reliance on or procurement of renewable generation, consistent with the Loading Order, for these other purposes and based on a different set of valuation principles. As CEERT stated in its initial comments (February 2012) on the implementation of the PEL: "A reasonable statutory construction of this mandate is that each IOU will have a cost limitation or ceiling on its total procurement expenditures *to comply with the RPS.*"[19]

In addition, as CEERT has advocated repeatedly in this and other proceedings, the 33% RPS mandate was never intended to create a ceiling on renewables procurement.[20] Governor Brown clearly understood this to be the case for renewables when, in signing Senate Bill 2 (1X) (33% RPS by 2020), when he stated:

> "While reaching a 33% renewables portfolio standard will be an important milestone, it is ***really just a starting point – a floor, not a ceiling.*** Our state has enormous renewable resource potential. I would like to see us pursue even more far-reaching targets. With the amount of renewable resources coming on-line, and prices dropping, I think 40%, at reasonable cost, is well within our grasp in the near future."[21]

[18] SCE 2013 RPS Plan, at p. 32.
[19] CEERT Initial Comments (2-16-12), at p. 19.
[20] *See, e.g.,* in R.11-05-005, CEERT Comments on IOU 2013 RPS Plans and ACR New Proposal (7-12-2013), at p. 2 and CEERT Comments on the Second Assigned Commissioner's Ruling on RPS Procurement Reform Proposals (11-20-2012), at pp 2-3.
[21] Governor's Signing Statement for SB 1X 2 (4/12/11) (http://gov.ca.gov/docs/SBX1_0002_Signing_Message.pdf

Assembly Bill (AB) 327 (Perea), which is currently on the Governor's desk for signature, in fact now confirms the Governor's intent. Thus, AB 327 makes the following critical change in PU Code Section 399.15, with the changes indicated by interlineation:

> "(3) The commission ~~**shall not**~~ **may** 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.**~~"

The impact of this statutory change is not raised or considered in either the July 23 ALJ's Ruling or the proposed Staff PEL Methodology.

Clearly, renewable generation is intended by this Commission and this State to play a key role not just in meeting RPS targets, but addressing, among other things, reductions in GHG emissions, general long term system needs, and generation requirements stemming from local capacity requirements. The PEL, consistent with this policy and the plain terms of Section 399.15, cannot be used to inappropriately constrain reliance on renewable generation as a preferred resource in the Loading Order, for which the procurement obligation is continuous and ongoing irrespective of whether a "target" set by another proceeding or program has been "hit."[22] This limitation on the application of the PEL should be made clear from the outset in the adoption of any proposal for its calculation.

III.
CEERT'S RESPONSES TO QUESTIONS POSED BY JULY 23 ALJ'S RULING

The above section incorporates and details CEERT's central concern with the adoption of an PEL methodology. Namely, the Commission must make clear that this "cost limitation," calculated with reference to RPS-specific procurement, can serve to cap renewables procurement only undertaken to meet the 33% RPS mandate. It cannot serve to constrain procurement of

[22] D.12-01-033, at pp. 19-21.

renewable generation by utilities to meet other resource needs consistent with the Loading Order and valuation methodologies tied to those needs.

Again, this necessary perspective on the purpose of the PEL is not part of the ALJ's Ruling or the Staff PEL proposal, but must be part, and limit the application, of any PEL methodology adopted by the Commission pursuant to Section 399.15 (c) – (g). The questions posed by the July 23 ALJ's Ruling, unfortunately, are not directed to this important limitation on the PEL methodology or the Staff Proposal.

In terms of the questions posed, CEERT offers the following overarching concerns regarding the Staff Proposal:

- PU Code Section 399.15(d)(1) requires that the PEL be "set at a level that prevents disproportionate rate impacts," but the Staff PEL Proposal does not adequately reflect the rate impact of the RPS.
- A determination of "disproportionate rate impacts" must account for the value to customers of the renewable energy resources being procured to meet their electric needs.
- The initial period covered by the Staff PEL Proposal should not be 10 years, but rather should extend to the shorter time frame of now through 2020, when the 33% mandate must be reached, in order to provide greater certainty on forecasted costs of compliance. Revisions should focus on steps required to ensure that this mandate is met by 2020.
- Finally, consistent with the Commission's intended reliance on renewable generation to meet other resources needs and confirmation that the 33% mandate is not a ceiling on such procurement (see, e.g., AB 327), any "voluntary" procurement of renewable resources above the RPS mandate or outside RPS compliance should be excluded from the PEL and the PEL should not serve to limit such procurement, which will otherwise be subject to the Commission's general reasonableness review authority.

As noted above, CEERT anticipates that "alternatives proposals" will be offered by other parties, including the Large-Scale Solar Association (LSA) and the California Wind Energy

Association (CalWEA). CEERT looks forward to reviewing and offering comments on those proposals on October 23.

IV.
CONCLUSION

CEERT appreciates the opportunity to offer its comments on the PEL. CEERT urges the Commission to make clear that *any adopted PEL* methodology, consistent with the statutory direction of Section 399.15 and state policy, applies only to renewable generation procured to comply with the 33% RPS mandate and does not serve to constrain procurement undertaken by the IOUs consistent with the Loading Order and to meet other resource needs.

Respectfully submitted,

September 26, 2013

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VERIFICATION

(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Comments of the Center for Energy Efficiency and Renewable Technologies on the Staff RPS Procurement Expenditure Limitations Proposal, have been prepared and read by me and 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 that the foregoing is true and correct and executed on September 26, 2013, at San Francisco, California.

Respectfully submitted,

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