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 CALIFORNIA WIND ENERGY ASSOCIATION AND THE LARGE-SCALE SOLAR ASSOCIATION ON THE STAFF PROPOSAL FOR A METHODOLOGY TO IMPLEMENT PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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On behalf of
the California Wind Energy Association
and the Large-Scale Solar Association

September 26, 2013

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I. INTRODUCTION

On July 23, 2013, the presiding Administrative Law Judge issued a detailed ruling (Ruling) requesting alternatives to, and comments on, a Staff Proposal for a methodology to implement a new procurement expenditure limitation (PEL), or cost cap, for California's Renewables Portfolio Standard (RPS) program (Staff Proposal). Senate Bill (SB) 2 (1x), enacted in 2011, adopted new statutory provisions in the California Public Utilities Code sections 399.15(c) through (g) intended to provide for cost containment.[1] In this filing, the California Wind Energy Association (CalWEA) and the Large-scale Solar Association (LSA) respectfully submit their comments on the Staff Proposal. As directed in the Ruling, LSA and CalWEA also are filing a proposed alternative methodology, in a separate filing. The LSA / CalWEA comments and alternate proposal build upon our prior comments on RPS cost cap issues, which CalWEA and LSA filed in February 2012. LSA and CalWEA welcome the opportunity to assist the Commission in its implementation of this important aspect of SB 2 (1X).

We appreciate the considerable thought and effort that the Staff has put into the Staff Proposal. LSA and CalWEA agree with many aspects of the Staff proposal, and as shown in our

[1] All statutory references herein are to the California Public Utilities Code unless otherwise specified.

related filing, have incorporated those features into our alternative proposal. However, the Staff Proposal requires significant modification to truly satisfy the letter and intent of SB 2(1X), particularly with respect to determining the extent to which the 33% Renewables Portfolio Standard mandate (RPS Mandate) will impact rates – if at all – and in guiding the Commission in its evaluation of whether any such impact is disproportionate relative to the values outlined in the RPS statute.[2] In order to determine whether any rate impact of the RPS Mandate is "disproportionate," as required by SB 2(1X), the Commission must consider two elements: 1) the cost of maintaining a reliable energy supply absent new RPS investments, and 2) the value of the benefits provided by RPS investments.

Fortunately, these issues can be addressed in a straightforward and transparent fashion, as discussed in CalWEA and LSA's proposed alternative approach. We look forward to working with the Commission, its staff and other stakeholders to develop a new procurement expenditure limitation (PEL) that will obtain the maximum value for California's ratepayers, while assuring against exposure to rate increases that are not commensurate with the value conveyed to ratepayers.

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[2] With respect to the RPS mandate, section 399.11(b) of the Code requires that:

> (b) Achieving the renewables portfolio standard through the procurement of various electricity products from eligible renewable energy resources is intended to provide unique benefits to California, including all of the following, each of which independently justifies the program:
> (1) Displacing fossil fuel consumption within the state.
> (2) Adding new electrical generating facilities in the transmission network within the Western Electricity Coordinating Council service area.
> (3) Reducing air pollution in the state.
> (4) Meeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation.
> (5) Promoting stable retail rates for electric service.
> (6) Meeting the state's need for a diversified and balanced energy generation portfolio.
> (7) Assistance with meeting the state's resource adequacy requirements.
> (8) Contributing to the safe and reliable operation of the electrical grid, including providing predictable electrical supply, voltage support, lower line losses, and congestion relief.
> (9) Implementing the state's transmission and land use planning activities related to development of eligible renewable energy resources.

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II. COMMENTS ON THE STAFF PROPOSAL

A. Determination of "Disproportionate Impact" Requires a Basis for Comparison and Evaluation of Whether Benefits Justify Any Impact.

To determine whether the RPS Mandate causes "disproportionate rate impacts," as required by SB 2 (1X), two fundamental elements are required — neither of which can be captured solely by examining the ratio of RPS Mandate costs to the overall revenue requirement. To satisfy the requirements of the statute, two separate steps must be taken.

First, it is necessary to determine whether the RPS has any rate impact at all, and if so, how much of an impact. The proposed methodology results in a total-cost figure that fails to net out expenditures that would otherwise be required. Excising RPS investment from the revenue requirement, and comparing that subset to the total, simply cannot show whether customers have or have not experienced any rate impact from RPS — absent an RPS Mandate, energy would still have to come from some source, and at some cost. It is only by determining the cost to customers of energy service absent the RPS Mandate that the rate impact of the Mandate itself, and not the need for the energy supply and system services it provides, can be assessed.

Second, if a rate impact is determined to have occurred, the statute also requires a determination of whether that impact is "disproportionate." In other words, the Commission must determine whether the RPS Mandate's rate impact is merited by the value that the RPS Mandate provides, in terms of the statutory objectives that the Legislature intended the RPS program to achieve – each of which, the Legislature found, "independently justifies" the mandate.[3] As a matter of statutory interpretation, and in order to determine whether the RPS Mandate may result in a "disproportionate" rate impact, the Commission must consider both the historical statutory objectives established for the program, as well as the new language provided in SB 2 (1X), which reaffirms those objectives. Simply put, if the rate impact is balanced by commensurate value intended by the statute, the rate impact cannot be "disproportionate." As a result, the PEL should be set at the point at which the RPS Mandate rate impacts would exceed the value returned by the program.

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[3] *Id. See supra*, n. 2 for the list of RPS program objectives.

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The Staff Proposal does not adequately address these two elements of the test required by SB 2(1X) to determine if a disproportionate rate impact has occurred. Comparison of the portion of the revenue requirement attributed to RPS costs to the overall revenue requirements can neither identify whether the RPS Mandate has occasioned any rate impact, nor whether any such impact is disproportionate.

Moreover, the ratio of RPS vs. total costs that the Staff Proposal would provide is misleading and potentially damaging to California's RPS and AB 32 objectives, as this ratio does not net out investments that would have been required absent the RPS Mandate. As a result, the magnitude of this ratio has the potential to confuse the legislature and the public. The Staff Proposal would, in effect, attribute to the RPS program the cost of all new resources needed to meet demand and ensure grid reliability, ignoring the fact that new resources would have been needed regardless of the RPS , while also attributing the lesser cost of existing resources to the non-RPS side of the equation. This has the unintended effect of vastly inflating the apparent cost of the RPS Mandate, and unfairly reducing the appearance of the costs that ratepayers would have had to pay for new conventional resources had no RPS Mandate existed. The Staff Proposal also lacks any guidance to the Commission regarding how to gauge the value of the benefits of the RPS program, and how to compare that value against any rate impact.

The methodology that the Commission ultimately adopts will need to address these concerns in order to comply with the requirements of the statute. We are confident that the CalWEA / LSA proposal will provide the Commission with the basis to make the required findings, and that other stakeholders may offer additional ideas that merit consideration.

B. The "High Water Mark" Methodology is Not Sufficiently Related to Disproportionate Impact, Nor Accounts for Unanticipated Occurrences in the Energy Supply.

The Staff Proposal's methodology would establish a PEL based on the highest annual RPS cost impact observed over a 10-year period, expressed as a percentage of the electrical corporations' revenue requirements. Staff intends this "high water mark" to provide "head room" for anticipated increases in costs that would be required to achieve 33% as we approach 2020. We appreciate Staff's effort to consider both future cost projections and historic total costs, an approach which would help to ensure the PEL is set at a level that allows higher future

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year needs to be met. That being said, the inherent flaw in this approach is that the highest total-cost impact in one year over a 10-year period has no clear relationship to the rate impacts themselves, or the extent to which those impacts are disproportionate. It also cannot address unanticipated needs, as have recently occurred in our electricity system with the closure of the SONGS nuclear units.

The "high water mark" approach would also distort the intended effect of the PEL. Because the Staff's approach does not allow for revisions reflecting changes in the amount or mix of RPS resources, system demand, or other relevant factors, the use of the ratio could easily result in RPS costs appearing to hit the cap, when in fact variations in the revenue requirement related to procurement of other resources are the main driver such that the cap could be reached even if the overall RPS costs dropped significantly. As another example, the cost cap could be hit if an outage of major resources (such as the SONGS units) requires additional, relatively expensive local RPS purchases (such as smaller solar resources that can fit within local reliability areas).

The Staff approach would also frustrate one of the primary purposes of the RPS, which is to provide the long-term hedge required for long-term stability in energy pricing. The fundamental nature of a hedge is that it may, at times, exceed the cost of the market, but the overall effect is a crucial moderation in volatility. To provide that value, it must be in place regardless of short-term fluctuation, whether favorable or unfavorable.

The RPS Mandate, and the aims it intends to serve, deserve more. An approach more consistent with both the new cost cap requirements of SB2 (1X) and the RPS legislative objectives would first estimate a range of expected costs to achieve 33% in future years, and then set the PEL at the high end of that range or at the level of rate impact determined by the Commission to exceed the benefits of the RPS Mandate. This would avoid tethering the PEL to the remainder of the revenue requirement, and to the consequences that could occur from that linkage, as discussed above.

C. A Biannual PEL Setting Process Would be Unduly Burdensome to Administer and Disruptive to the Market.

The Staff Proposal includes a process to adopt new 10-year PELs every two years. Rather than set a clear limit that the marketplace would understand and could plan for if signs

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approached, this changing target would sow confusion and frustrate opportunities to decrease costs by continued, sustained investment. It is not clear that this regular forward projection would be sufficiently more precise to merit that downside, nor to merit the expenditure of resources by the Commission and interested stakeholders to ensure that it has been appropriately forecast. Rather, as CalWEA and LSA propose, a single preliminary PEL should be established for the 20-year period, with periodic updates every five years paired with additional assessments if the PEL is being approached, which would provide for a more efficient and transparent process minus needless market disruptions. Under this scenario, the Commission would need only review the PEL and determine whether an adjustment is required if procurement, despite the trend of decreasing RPS costs, begins to approach the PEL.

D. The PEL Is a Programmatic-Level Cost Containment Tool and Should Not Be Applied to Individual Contracts.

The use of the PEL in advice letters, as proposed in the Staff Proposal, is inappropriate. The PEL is intended to be program-based and should not be used to set individual contract benchmark prices.[4] Moreover, the PEL outlined in the Staff Proposal, relies on the annual assessment of RPS procurement, which is an integral part of the RPS procurement proceeding; the PEL is not designed to provide a per contract limit like the Market Price Referent. As described in CalWEA and LSA's proposed alternate methodology, the use of the PEL to benchmark individual contracts should only be used in the case where the Commission has determined that the cost cap has been reached, and then as a tool in assessing whether incremental procurement meets a *de minimus* test.

E. The Proposed Escalator Percentage for the Revenue Requirement is Arbitrary.

The Staff Proposal's use of a 2.75% escalator for revenue requirement highlights the flaw in the revenue requirements ratio approach. As the revenue requirement in future years is almost certain to grow, the approach taken by the Staff Proposal necessitates an escalator – reasonably one based on based on attrition-year adjustments, which the Staff proposes. However, the basic

[4] *See* Section 399.15(e)(1), (f).

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problem with the Staff proposal is that it escalates the entire revenue requirement at 2.75% per year, including the RPS costs included in that revenue requirement, even though the Staff's PEL proposal also includes, in the numerator of its ratio, a detailed forecast of RPS costs which is certain to produce a different rate of growth than 2.75% per year. As a result, the Staff's ratio of RPS costs to total revenue requirement would include significantly different rates of escalation of RPS costs in the numerator compared to the denominator. This inconsistency could undermine the accuracy of the Staff's method. As a more accurate and consistent alternative to the Staff proposal, CalWEA and LSA have proposed that a fixed escalation rate should only be applied to the elements of the revenue requirement that are not related to RPS procurement.

III. RESPONSE TO SPECIFIC QUESTIONS

CalWEA and LSA's responses to specific questions posed in the Ruling follow. We reserve our views on any questions that are not included in this section.

> ***Question 1***. *Section 399.15(e) mandates that the Commission assess whether each electrical corporation can "achieve a 33-percent renewables portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations."*
>
> - *Does this require that the procurement expenditure limitation methodology extend beyond 2020? Explain why or why not.*

As summarized in the question, this provision of the statute mandates only that the Commission assess whether it is possible for the electrical corporations to satisfy and then maintain the 33% RPS while keeping costs below the threshold set by the Commission for achieving the target in the first instance. This provision does not establish a requirement that the Commission mandate a procurement expenditure limitation after the target has been achieved, nor is there any other explicit requirement in SB 2 (1X) to that effect.

> ***Question 2***. *Do you agree with Staff's proposal to use a rolling 10-year timeframe for setting and administering the PEL? Explain why or why not.*

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Please see our comments in section II.A, above, as well as our alternate proposal filed concurrently with these comments. Multiple, changing procurement limitations would be unnecessarily confusing and resource-intensive, and would have the effect of chilling the investment RPS resources, flouting the cost containment intent of the legislature -- as it is that continued investment that remains the best means of stimulating competition among renewables and reducing their costs of renewables over time. A far better approach would be to set a longer-term PEL; please refer to CalWEA and LSA's proposed alternative methodology for a further discussion of this issue.

Question 3. *If a longer-term timeframe is required or preferred to implement and administer the PEL, what methodological framework can be established to:*

- *account for the length of the majority of the IOUs' RPS contracts (e.g., 20+ years);*
- *account for the need to contain RPS costs while enabling an IOU to maintain flexibility to optimize the value of its RPS portfolio.*
  - *Should the PEL framework extend over a period equal to the length of the longest term RPS contract, while the actual PEL would apply on a rolling 10-year period, similar to the approach used in the current LTPP?*
  - *Should another process for incorporating the long-term RPS procurement time horizon be used?*
  - *Please identify strengths and weaknesses of the approach chosen from both an analytical and practical (i.e., implementation by IOUs and by the Commission) perspective.*

Please see CalWEA and LSA's proposed alternative methodology, which has been filed concurrently, for our proposal on a preferable longer-term mechanism.

Question 5. *[For brevity, not repeated here].*

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CalWEA and LSA note, with respect to the analysis requested in Question 5, that the statute is completely clear in barring the consideration of "indirect costs," which are well-defined in Section 399.15(d)(3).

> ***__Question 7__***. *Section 399.15(d)(2) provides that "the costs of all procurement credited toward achieving the renewables portfolio standard" will count towards the procurement expenditure limitation.*

Please see CalWEA and LSA's proposed alternative methodology, which has been filed concurrently, for a discussion of how costs for renewables that are credited against the RPS requirement should be calculated, considering historical costs while maintaining a forward-looking basis for the PEL.

> ***__Question 10__***. *What is the role of the RNS in setting the PEL?*

Please see CalWEA and LSA's proposed alternative methodology, which has been filed concurrently, for a discussion of the role that the RNS should play in calculating the PEL.

> ***__Questions 11__***. *The RPS procurement expenditure limitation methodology proposed by Staff measures an IOU's total RPS procurement costs and not the marginal cost (or savings) associated with RPS procurement compared to conventional resources for electric generation and capacity.*

CalWEA and LSA believe, as noted in this question, that the Staff Proposal's methodologies focus on total RPS procurement costs misses both the express requirements and intent of the RPS statute, as amended by SB 2 (1X). Please see the discussion in Section II.A, above, for our views on the importance of this assessment, as well as our proposed alternative methodology, which has been filed concurrently, for a discussion of how this assessment could be undertaken.

> ***__Question 13__***. *Section 399.15(d)(1) specifies that the PEL must be "set at a level that prevents disproportionate rate impacts."*

The Staff proposal in effect sets the procurement expenditure limitation at the level at which the Commission determines that disproportionate rate impacts can be prevented.

CalWEA and LSA disagree that the Staff Proposal provides a proper foundation, consistent with the entirety of the RPS statute as amended by SB 2(1X), for the Commission to determine whether disproportionate rate impacts have occurred, or can be avoided. As we discuss in Section II.A, it is necessary, after determining whether RPS expenditures have caused rates to increase relative to what they might otherwise be, to determine whether any such increase is merited in relation to the benefits they provide.

Question 16. *Do you agree with the Staff's proposal that the 10-year PEL methodology should forecast an increase in IOUs' total revenue requirements annually by 2.75%? Explain why or why not. If some other escalation rate should be used, explain why the proposed rate is preferred.*

Please see the discussion in Section II.E, above, for a further discussion of this issue.

Question 18. *Do you agree with Staff's proposal that the IOUs should update inputs and assumptions at each key decision point along the procurement continuum? (See Attachment C.) Explain why or why not.*

CalWEA and LSA are concerned that the proposed biannual update would be unduly burdensome and disruptive to the market, frustrating the intent to reduce costs of attaining the RPS requirement. Please see the discussion in Section II.C. above, for a further discussion of our concerns, as well as our proposed alternative methodology, which has been filed concurrently, for a further discussion of the suitability of a longer-term approach.

Question 21. *[For brevity, not repeated here]*

CalWEA and LSA do not believe that the statute requires, or supports, the use of the PEL on a project or contract-specific basis, nor can or should it have any impact on the screens used by electrical corporations in selecting contracts. Rather, the PEL is to be used at a programmatic level in the RPS Procurement Plans and could be used as a second, contract-specific screen to

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help determine if the contract would have more than a *de minimus* impact on rates. Please see the discussion in Section II.D., above, for a further discussion of this issue, as well as our proposed alternative methodology, which has been filed concurrently, for a further discussion of how the PEL and *de minimus* screens should be applied.

Question 22. How, if at all, should the PEL methodology take account of new or emerging technologies or procurement requirements? (e.g., IOUs' investments in storage connected to distribution systems; or procurement necessary for local capacity requirements (see D.13-02-015).)

Please see answer below Question 24.

Question 23. Should the PEL include a portfolio cost minimization strategy/framework? How would such a strategy be implemented as part of the PEL?

Please see answer below Question 24.

Question 24. *What is the role of "portfolio optimization" in implementing the PEL?*

(Answers to Questions 22-24)

We should pause before using a very narrow provision of the RPS as a means of revolutionizing the RPS and other CPUC planning and procurement methodologies. And there is no need to use the PEL to develop a "cost minimization" framework for the RPS – that already exists in the form of the LCBF analysis, and any needed changes to that should be considered apart from the PEL methodology. However, the Commission can implement the PEL with an eye towards harmonizing the evaluation performed under its various programs.

In the CalWEA/LSA's proposed methodology, filed separately, we argue that determining "disproportionate costs" requires determining the costs that would be anticipated without the RPS investment, compared to a number of gas price and RPS procurement scenarios and within

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the constraint of the state's greenhouse-gas policies. Assuming that the inputs to the RPS Calculator (which would be used to determine rate impacts) accurately reflect forecasted energy, capacity and perhaps even local or flexible capacity needs, this approach would illuminate the net costs of different RPS portfolios (possibly including portfolios with a higher portion of emerging technologies) and may suggest optimized portfolios. While the PEL itself is not the right tool to force RPS procurement decisions or to harmonize the RPS with other Commission programs, the Commission could strive to ensure that, to the extent possible, the same methodologies, if not the same values, that are used as the basis of inputs to the RPS Calculator and for other Commission programs. For example, if a need for capacity is shown in the LTPP process that should translate into higher values for capacity in the RPS Calculator.

> ***Question 28***. *Section 399.15(b)(3) provides that "a retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements."*

CalWEA and LSA note that recent amendments to the RPS statute, under AB 327, modify the Commission's authority, expressly allowing it to require additional RPS procurement beyond the 33 % level. The sub-questions posed in the Ruling should be reconsidered in the event that AB 327 becomes law. CalWEA and LSA further note that (i) SB 2 (1X) does not require the application of the PEL to procurement that an electrical corporation may voluntary undertake, and (ii), as discussed above, the PEL is not relevant to project- or contract-specific assessments, and should not be applied to them.

IV. CONCLUSION

CalWEA and LSA believe Staff's Proposal is a good starting point for developing a methodology to implement a new PEL for the State's RPS, but that more work is needed. As outlined above and in the LSA / CalWEA alternate proposal (filed separately), CalWEA and

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LSA believe some fairly straightforward changes to the Staff Proposal will provide the appropriate framework for the Commission to calculate a transparent cost cap that both provides market certainty and ensures that the PEL fulfills the legislative objectives of SB2 (1X). . CalWEA and LSA appreciate the opportunity to comment on Staff's Proposal and look forward to working with the Commission on this issue.

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On behalf of the
Large-scale Solar Association and
California Wind Energy Association

September 26, 2013

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VERIFICATION

I, Nancy Rader, am Executive Director for the California Wind Energy Association, and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of the COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND THE LARGE-SCALE SOLAR ASSOCIATION ON THE STAFF PROPOSAL FOR A METHODOLOGY TO IMPLEMENT PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM are true to my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on September 26, 2013 in Berkeley, California.

/s/ Nancy Rader
Nancy Rader

I, Shannon Eddy, am Executive Director for the Large-Scale Solar Association, and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of the COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND THE LARGE-SCALE SOLAR ASSOCIATION ON THE STAFF PROPOSAL FOR A METHODOLOGY TO IMPLEMENT PROCUREMENT EXPENDITURE LIMITATIONS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM are true to my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on September 26, 2013in Sacramento, California.

/s/ Shannon Eddy
Shannon Eddy

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