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 R.11-05-005

REPLY COMMENTS OF THE GREEN POWER INSTITUTE ON COMPLIANCE AND ENFORCEMENT IN THE RPS PROGRAM

November 12, 2013

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REPLY COMMENTS OF THE GREEN POWER INSTITUTE ON COMPLIANCE AND ENFORCEMENT IN THE RPS PROGRAM

Pursuant to the September 27, 2013, *Administrative Law Judge's Ruling Requesting Comments on Compliance and Enforcement Issues in the Renewables Portfolio Standard Program*, as modified by the October 18, 2013, *Ruling* by ALJ Simon granting an extension to file *Comments* and *Reply Comments*, in Proceeding R-11-05-005, the **Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program**, the Green Power Institute (GPI), the renewable energy program of the Pacific Institute for Studies in Development, Environment, and Security, provides these *Reply Comments of the Green Power Institute on Compliance and Enforcement in the RPS Program*. Our *Reply* is focused on the topics of compliance reports, and penalties.

Compliance Reports

The three large IOUs oppose the filing of their end-of-compliance-period *RPS Compliance Reports* with the common refrain that it would lead to increased administrative burden, as well as offering various other arguments in opposition. As we pointed out in our Oct. 25 *Comments*, in the world of electronic filing, nearly all of the administrative burden of filing and serving a document is involved with the service, so adding the requirement to file a document that is already being served entails a trivial additional administrative burden, and should not be an issue in determining whether to require filing. At least one of the utilities suggested that adding a filing requirement would represent an added administrative burden for the docket office of the Commission. While it is true that the docket office has to examine each filed document in order to ensure that it meets the specifications for filing, the fact is that that is what the docket office is there for, and we have never heard of a situation in which a document containing information that could enrich the record of a proceeding was withheld from filing simply to ease the workload on the docket office.

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PG&E and SCE express concern about the data requirements and filing-size limits for large spreadsheets, which are at the heart of the compliance reports. In fact, the only version of the reports that would be publicly filed are the versions that are redacted for reasons of confidentiality, and if the redacted versions are loaded into the filing document as bitmapped images rather than spreadsheets, this not only greatly reduces the data requirements, it also ensures that there are no unintended links to confidential parts of the databases. We assure the Commission that the issue of file-size limitation can be dealt with relatively easily in the working group on compliance reporting, and should not be an impediment to the formal filing of the *RPS Compliance Reports*.

In response to the question of whether to allow parties to formally comment on the compliance reports, PG&E and SCE both state that they do not object to allowing such comments, while SDG&E argues against allowing them. SDG&E states:

> Compliance reports present historical, factual data to the Commission in order to enable the Commission to determine compliance for the particular retail seller. Collecting varying points of view regarding this static data set would in no way aid the Commission in its compliance determination. The compliance report does not address policy issues, thus it is not clear what purpose would be served by soliciting party comments on the report. [SDG&E *Comments*, pg. 3.]

We disagree with several aspects of this statement. The Compliance Reports do not contain **only** factual data; they also contain projections of future activity, as well as narrative. The *RPS Compliance Reports* do **not** serve the singular purpose of allowing the Commission to determine compliance for each retail seller; they provide a very valuable public information service by presenting a broad snapshot of the compliance status of each of the retail sellers under Commission jurisdiction. The compliance reports certainly **do** address policy issues, as indeed they ought to, and as the GPI has demonstrated repeatedly, the same static dataset that underlies the compliance reports can be cast in more than one way, a matter that should be of interest to both the Commission and the public. In fact, the reason that we petitioned the Commission for permission to file *Comments on the RPS Compliance Reports* in the first place was our concern about the policy slant that the utilities were casting in their *RPS Compliance Reports*.

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Penalties

There is widespread agreement that the unit penalty amount for failure to achieve a procurement requirement during a given compliance period should remain constant at $50 per deficient REC, as position that the GPI also endorsed. However, there is no such agreement among the parties concerning retaining the annual cap on the penalty amount, which was set at $25 million flat per compliance year for all regulated entities in D.03-06-071, and has never been altered. Predictably, the large utilities favor retaining the cap at its present level of $25 million for all regulated entities, and applying it singly to the multiyear compliance periods that are a part of the current SB 2 (1X) phase of California's RPS program. On the other hand, most of the small retail sellers argue that the cap should be made proportional to a retail seller's size, since the present structure strongly favors the largest IOUs, and provides virtually no relief to smaller retail sellers.

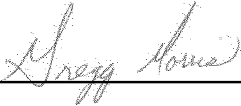
As we argued in our *Opening Comments*, a penalty cap that does not correlate to the size of the retail seller is patently unfair, and should be corrected for the current phase of the RPS program. We also argued that, considering the size of the annual procurement deficits that were accumulated by the largest IOUs during the first phase of the RPS program, we believed that an annual penalty cap of $25 million for the largest retail sellers was too low. We note that SDG&E, in their *Opening Comments*, was willing to settle for a penalty cap of $25 million. If a cap of $25 million is appropriate for a retail seller the size of SDG&E, then by the rules of proportionality it must be too low to be appropriate for PG&E or SCE.

In our proposal, as presented in our *Opening Comments*, the annual cap amount for a particular retail seller, once established, would be multiplied by the number of years in a compliance period in order to establish the cap for that compliance period. For example, our proposal would set an annual penalty-cap level for SDG&E at $10 million, which would produce a $30 million cap for them for each of the first two multiyear compliance periods. This amount is close to the $25 million that they state in their *Opening Comments* would work for them.

Our proposal in our *Opening Comments* would set the penalty cap at $150 million for PG&E and SCE for each of the first two compliance periods. Admittedly this is a high number, however considering the size of the procurement obligations that these largest retail sellers will have for those multiyear compliance periods, $150 million is not out of proportion to what would appropriately cap the kinds of deficits that historical experience suggests could be racked up by the large IOUs over a multiyear compliance period, without letting them off the hook too easily.

Dated November 12, 2013

Respectfully Submitted,



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VERIFICATION

I, Gregory Morris, am Director of the Green Power Institute, and a Research Affiliate of the Pacific Institute for Studies in Development, Environment, and Security. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Reply Comments of the Green Power Institute on Compliance and Enforcement in the RPS Program*, filed in R.11-05-005, 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.

Executed on November 12, 2013, at Berkeley, California.

Gregory Morris

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