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<br>(Filed May 5, 2011) |
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**COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON
STAFF PROPOSED REVISIONS TO RENEWABLE NET SHORT METHODOLOGY**

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**CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON STAFF PROPOSED REVISIONS TO RENEWABLE NET SHORT METHODOLOGY**

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the "Staff Proposal for Updating the Renewable Net Short (RNA) Methodology" ("Staff Proposal"). The Staff Proposal is Attachment A to the Administrative Law Judge's (ALJ's) Ruling issued in this proceeding on February 19, 2014 (February 19 ALJ's Ruling). These Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the February 19 ALJ's Ruling.

## I.
## THE FEBRUARY 19 ALJ'S RULING AND ATTACHED STAFF PROPOSAL FAIL TO POSE OR ADDRESS A KEY QUESTION PRECEDENT ON THE RNS METHODOLOGY'S ONGOING PURPOSE GIVEN CHANGES IN STATE STATUTE AND COMMISSION PRECEDENT SINCE ITS ORIGINAL ADOPTION.

CEERT has reviewed both the Staff Proposal and the questions posed for party responses by the February 19 ALJ's Ruling. CEERT believes that both the Staff Proposal and the February 19 ALJ's Ruling fail to consider or address a critical question precedent to continued reliance on the Renewable Net Short (RNS) methodology, to the extent that it is used to *limit or cap* renewables procurement, which must be answered before any further action is taken on that methodology.

Namely, given changes in both the RPS statute *and* Commission precedent applicable to procurement to meet all energy needs *that have taken place since the RNS was first authorized in*

*May 2012*, what is the specific, ongoing purpose of the RNS methodology? Specifically, the RNS methodology or calculation must be put in context and reconciled with both State statute and Commission decisions enacted or issued since its adoption that have expanded the Commission's reliance on renewable generation on an "ongoing" basis to meet *all* energy needs irrespective of program-specific "targets."[1] These critical changes in the role to be played by renewable generation in meeting energy needs have arisen (1) through Commission clarification and application of the Energy Action Plan Loading Order of "preferred resources" (i.e., renewable generation) in Long Term Procurement Plan (LTPP) decisions *beginning in* 2012, which most recently have resulted in procurement authorizations for preferred resources, including renewable generation, irrespective of RPS targets, and (2) through the enactment in *October 2013* of Assembly Bill 327, which significantly amended Public Utilities (PU) Code Section 399.15(b)(3), by removing language that had been read as preventing the Commission from requiring renewables procurement above "specified" quantities subject to the 33% by 2020 RPS target.

The Staff Proposal, however, makes no reference to AB 327, the Loading Order, or recent LTPP decisions, other than related to the bundled sales forecasts.[2] Similarly, the February 19 ALJ's Ruling includes no questions on the impact of changes to the Loading Order and recent LTPP procurement decisions on the RNS methodology, and, with reference to AB 327, only asks in two places how retail sellers should "account" for this statutory change "in their RNS calculations."[3] These questions, however, presuppose the ongoing relevancy of the RNS methodology in the first place, without "accounting" for how its purpose or application, if used

[1] See, D.13-02-015, at pp. 2-4, 10-11; Pending Track 4 Proposed Decision in R.12-03-014 (LTPP), at pp. 2, 12-15.
[2] February 19 ALJ's Ruling, Attachment A (Staff Proposal), at pp. 5, 25.
[3] February 19 ALJ's Ruling, at pp. 4-5.



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as a basis to limit renewables procurement, has now changed in response to both statutory amendment and recent Commission precedent.

The impact of these changes (Loading Order and AB 327) is particularly relevant, and must accounted for, where the RNS methodology is *not* statutorily mandated, but is in fact an administrative construct that can and must be adapted to current, applicable, and relevant law and policy. Specifically, even for purposes of the RPS Program, the Commission has recognized that in implementing "new statutory provisions," the Commission must be "guided by" its "fundamental responsibility" in overseeing utility electric service, as well as "the rules of statutory construction."[4] In a 2012 RPS decision, the Commission defined that "fundamental responsibility" as overseeing "the utility's provision of an adequate supply of safe and reliable electricity at just and reasonable rates."[5]

However, *since that time*, Commission has made clear in its LTPP decisions that, for *all energy procurement*, this "oversight" is *not* just limited to those two factors, but must balance *three* responsibilities: ensuring reliability in the electric system, reasonableness of rates, *and* "a commitment to a clean environment," which emanates from both State statute and Commission policy.[6] This three-fold balance of responsibilities has led the Commission *since adoption of the RNS Methodology in May 2012* to adopt and confirm significant clarifications to the application of the Energy Action Plan Loading Order that is to guide all energy procurement.

Today, therefore, application of this "clarified" Loading Order requires investment first in "preferred resources," which include "renewable power, demand response resources and energy efficiency," to meet all energy needs.[7] In this regard, the Commission in D.13-02-015

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[4] D.12-05-035, at pp. 13-14.
[5] Id., at p. 13.
[6] D.13-02-015, at p. 35.
[7] D.13-02-015, at pp. 10-11; R.12-03-014 (LTPP) Track 4 Proposed Decision (Pending), at p. 2.



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interpreted and applied the Loading Order in a manner that, for the first time, not only relied on preferred resources to reduce a forecasted energy need, but directed Southern California Edison Company (SCE) to procure hundreds of MWs of preferred resources to *meet* that need.[8] This kind of procurement authorization has been continued for SCE and expanded to include San Diego Gas and Electric Company (SDG&E) in a pending Proposed Decision in R.12-03-014 (LTPP) that requires '"buckets' of procurement for preferred resources (such as *renewable power*, demand response resources and energy efficiency)," with SCE "required to procure up to 60% of new local capacity in the LA Basin from preferred resources" and SDG&E "required to procure at least 40% -- and up to 100% -- of new local capacity from preferred resources."[9]

This ground-breaking reliance on "preferred resources" (i.e., renewables) has established the paramount precedent for determining what resource types are first required to be considered and procured to meet utility energy needs. By taking this action, the Commission has confirmed that its goal is to "strike a balance among the Commission's three primary statutory directives for ensuring reliability, reasonable rates and a clean environment" and that the Commission "cannot, and will not sacrifice or ignore any of these imperatives."[10] To that end, the Commission has made clear that "*all utility procurement* must be consistent with the Commission's established Loading Order, or prioritization" and the IOUs' obligation is "to follow the loading order on an *ongoing basis*," which "duty" is "*not* relieved" "[o]nce procurement *targets* are achieved for preferred resources."[11] Specific to renewables procurement, the Commission has been clear: "the

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[8] D.13-02-015, at p. 2. In that case, the "need" at issue was Southern California Edison Company's local capacity requirements (assuming the operation of the San Onofre Nuclear Generating Station (SONGS)) in the 2012 Long Term Procurement Plan (LTPP) Rulemaking (R.) 12-03-014.

[9] R.12-03-014 (LTPP) Track 4 Proposed Decision (2-11-14), at p. 2; emphasis added.

[10] Id., at p. 36.

[11] Id., at pp. 10-11 (emphasis added), with citation to D.12-01-033.



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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."[12]

In this regard, the Commission further observed in D.13-02-015 that, while "procuring additional preferred resources is more difficult than 'just signing up for more conventional fossil fuel generation,'…consistency with the Loading Order and advancing California's policy of fossil fuel reduction demand *strict compliance with the loading order*."[13] Quite simply, the "loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved."[14]

As for the statutory change resulting from enactment of AB 327, it is not enough to "revise" the RNS methodology by only asking how retail sellers will "account" for that change in their RNS calculations *if* that methodology and resulting calculation are going to be used to impose an administrative limit on RPS procurement at odds with the "plain language" of that statute. Such a result effectively prejudges a statutory interpretation that is not borne out by the amended terms of Section 399.15(b)(3) resulting from AB 327, as shown in bold strikethrough (language removed) and bold type (language added) as follows:

> Section 399.15(b)(3): "(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~~**."

Thus, what was once prohibited – requiring procurement above a 33% ceiling or the compliance period targets – is now *permitted*. This significant change, in fact, brings the RPS statute more in line with the Commission's clarification and application of its Loading Order to

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[12] D.12-01-033, at p. 20; emphasis added.
[13] Id., at p. 11; emphasis added.
[14] Id., at p. 20



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require procurement authorization and investment first in preferred resources (i.e., renewables) to meet all energy needs regardless of other "preset" targets.

The Commission in this RPS Rulemaking simply cannot continue to ignore statute and other applicable precedent that has fundamentally changed the extent to which IOUs are to rely on renewable generation to meet their energy needs. In fact, the ongoing failure by the Commission to at least recognize and incorporate these policies into the RPS Program will only create confusion and uncertainty in the renewables market. The Commission should, therefore, ensure that any action it takes on revising the RNS methodology affectively recognizes and accounts for its Loading Order procurement directions, as well as AB 327.

Thus, at this point in time, the Commission must first be clear that an RPS "RNS" does not serve to create a ceiling on procurement of renewable generation to comply with the RPS Program and certainly cannot be used to restrict the preferred resource procurement authorizations granted by the Commission in its LTPP rulemakings.[15] To that end, CEERT asks that the Commission take the following actions:

(1) To the extent that the Commission believes that the RNS methodology, either in its current form or revised, has some ongoing useful purpose to RPS Program management, the Commission must identify that purpose exclusive of any use of that methodology to limit the procurement of renewable generation,

(2) The Commission must make clear that the RNS methodology cannot be applied or used to limit the procurement of renewable generation as authorized by the Commission to meet any identified energy need, and

(3) The Commission must make clear that the RNS methodology and calculation, if continued to be used in the RPS Program for any purpose, has no application to rulemakings or proceedings that authorize resource procurement outside of the RPS Program, including, but not limited to, Long Term Procurement Planning (LTPP) (R.12-

[15] The still pending 2012 LTPP is R.12-03-014. The recently instituted 2014 LTPP is R.13-12-010.

03-014/R.13-12-010), Resource Adequacy (RA) (R.11-10-023), the Joint Reliability Plan (JRP) (R.14-02-001), any successor proceeding, or any other proceeding in which procurement of energy resources is authorized.

## II.
## CEERT RESPONSES TO QUESTIONS ON STAFF RNS PROPOSAL

As noted previously, only two questions (Section 3.1, Question 5, and Section 3.2, Question 4) posed by the February 21 ALJ's Ruling reference AB 327, one asking how AB 327 will be "accounted" for in the "RNS calculations" or the other asking how it will affect the "function of the voluntary margin of over-procurement in the RNS going forward."[16] From CEERT's perspective, for the reasons stated in Section I above, these questions fail to address how and to what extent AB 327, along with the Commission's current Loading Order directives, have affected the purpose of the RNS methodology in the first place. CEERT, therefore, renews its recommendations in Section 1 on how the Commission should proceed to reconcile any use of the RNS methodology to limit procurement of renewable generation with AB 327 and current Loading Order decisions and preferred resource procurement authorizations.

To the extent that the RNS methodology continues to be used as a management tool for RPS compliance, in Section 3.4, the February 19 ALJ's Ruling asks questions regarding "RECs from expiring contracts."[17] With the possible exception of Question 3 in this section (Section 3.4), these questions do not reach a proposal made by Staff regarding the potential treatment of those contracts.

Specifically, Staff proposes as follows:

> "To account for the possibility of retail sellers re-contracting with these existing RPS facilities, Staff proposes that retail sellers disclose *RECs from Expiring RPS Contracts* in their RNS filings. Retail sellers should also disclose the PCC classification of all RECs from expiring contracts. By doing so, retail sellers will

[16] February 19 ALJ's Ruling, at pp. 4, 5.
[17] February 19 ALJ's Ruling, at p. 6.



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report a more complete and transparent forecast of their RNS by disclosing the RECs that could potentially be procured from re-contracted facilities with expiring contracts.

"In accordance with the re-contracting assumption adopted in the 2012 RNS Ruling, expiring RECs will not be included in the RNS calculation methodology."[18]

CEERT agrees with these recommendations. Subject to the limitations noted above that would prohibit the use of the RNS methodology or calculation to limit renewable generation procurement authorized by this Commission to meet energy needs, the RNS methodology or calculation as used going forward should encompass Staff's recommended approach on the treatment of expiring RECs.

Finally, CEERT is uncertain of the intent of the question posed by the February 19 ALJ's Ruling regarding whether the "importance of expiring contracts" would be "increased or decreased if the Commission exercised its authority pursuant to AB 327 to require a higher level of RPS eligible procurement?"[19] If this question is suggesting that "expiring contracts" receive some kind of preferential treatment in RPS solicitations, no basis has been established to support such treatment or create a preference for existing versus new renewable generation bid into an RPS solicitation nor is one created by the terms or mere existence of AB 327.

## III.
## CONCLUSION

CEERT appreciates the opportunity to offer its opening comments on the February 19 ALJ's Ruling and the Staff Proposal on the RNS Methodology. CEERT strongly urges the Commission to address and resolve the longstanding and ongoing conflicts in statutory and policy direction on procurement of renewable generation between *all other proceedings* and this RPS rulemaking. Allowing this matter to remain unresolved, only creates confusion and

[18] February 19 ALJ's Ruling, Attachment A (Staff Proposal), at p. 20.
[19] February 19 ALJ's Ruling, at p. 6.



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uncertainty in the renewables market. To the extent that CEERT did not address other questions posed by the February 19 ALJ's Ruling, it reserves the right to do so in its reply to the comments of other parties.

Respectfully submitted,

March 12, 2014

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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 Proposed Revisions to Renewable Net Short Methodology, 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 March 12, 2014, at San Francisco, California.

Respectfully submitted,

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