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 APRIL 2014 RENEWABLES PORTFOLIO STANDARD PROCUREMENT REFORM STAFF PROPOSAL

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I. Introduction and Summary

On April 8, 2014, the Administrative Law Judge in this proceeding issued a ruling that contained a staff proposal to reform the procurement review process for the Renewables Portfolio Standard ("RPS") program ("April 2014 Staff Proposal" or "Staff Proposal").[1] The Union of Concerned Scientists ("UCS") thanks the Commission for the opportunity to provide these opening comments on the April 2014 Staff Proposal. UCS continues to appreciate the Commission's efforts to enhance the efficiency and transparency of the RPS procurement review process and offers the following comments, which are summarized below:

- Before adopting any environmental data requirements, the Commission should clarify the intended benefits of each data category and provide staff with guidance on how to proceed if the quality and quantity of data vary from contract to contract.

- The Commission should remove the "need authorization" from the standards of review for RPS power purchase agreements.

- The Commission should clarify that approval of RPS shortlists will not be delayed if total procurement would exceed an IOU's renewable net short.

[1] California Public Utilities Commission, *Administrative Law Judge's Ruling (1) Issuing Staff Proposal to Reform Procurement Review Process for the Renewables Portfolio Standard Program, (2) Setting Comment Dates, and (3) Entering Staff Proposal into the Record*, April 8, 2014.

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II. Before adopting any environmental data requirements, the Commission should clarify the intended benefits of each data category and provide staff with guidance on how to proceed if the quality and quantity of data vary from contract to contract.

UCS is a longtime advocate of improving project viability and portfolio risk analyses to minimize project delay and failure in the RPS program. Assessing the environmental risks of proposed projects is an important activity that investor-owned utilities ("IOUs") must undertake before they include projects on an RPS shortlist or execute power purchase agreements ("PPAs"). UCS believes that while additional environmental information about a project may add value to the advice letter vetting process, Energy Division staff are likely to lack the skills needed to adequately assess the environmental impacts of proposed projects. If the Commission continues down this path, UCS believes it should reinforce the responsibility of the IOUs to undertake thorough project viability analyses during the shortlisting and contract execution phases.

The Staff Proposal includes five categories of environmental data requirements that would be added to advice letter filings. The purpose is to "provide an extra step of due diligence to assess the overall viability of an RPS eligible process and are not intended to be additional permitting requirements or prejudge the permitting process."[2] But the Staff Proposal lacks information on how each of these five categories will fill a specific information gap that Energy Division staff need to successfully evaluate PPAs submitted through advice letters. UCS believes that it would be helpful for the Commission to explain the reasons behind including the five categories of environmental data requirements in the

[2] April 2014 Staff Proposal, p.9.

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Staff Proposal. Doing so would give parties a better sense of the potential value of such information and how this information may be used.

UCS also urges the Commission to provide more guidance to Energy Division staff regarding how environmental data should be used given the likelihood that the quality and quantity of environmental data for each advice letter will differ. For example, UCS believes that including a project boundary in an advice letter might allow the Energy Division to better understand how the project would fit into the existing and forthcoming state and federal regional land use planning efforts meant to guide renewable energy project investments. UCS assumes that it is likely each project advice letter could include a file of the proposed project boundary. But if that is not the case, how will the Commission treat advice letters that do not submit a project boundary? For this reason, the Commission must provide some guidance on how Energy Division staff should assess PPAs with varying degrees of information.

Other categories of environmental data could result in larger data quality and quantity variations across advice letters. Category "e" would require project developers to list "any known issues that may put the permitting process at risk."[3] This seems like a very subjective and sensitive set of information that project developers may have a strong incentive to downplay or omit altogether. The IOUs are already required to assess the risk of individual project delays or failures at the portfolio level in their annual RPS plans.[4] But this assessment is only for projects that have already received a Commission-approved PPA. UCS does not object to disclosing permitting risks in advice letters at this time, but it does

[3] April 2014 Staff Proposal, p.9.
[4] *See* Cal. Pub. Util. Code section 399. 13(a)(5)(F)

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not believe Energy Division staff should depend upon this data requirement to provide a complete or necessarily accurate snapshot of potential permitting risks.

Finally, UCS believes that the Commission clarify in this proceeding that approval of a PPA should not be used, by the IOUs or project developers or anyone else, to portray a potential project as low-impact, or influence negotiations about mitigating or preventing environmental impacts in environmental permitting processes that are separate from the Commission's jurisdiction. While PPA approvals do accelerate project development, they are not a guarantee that a project will be developed, or will be developed in the way it was originally envisioned in the PPA.

III. The Commission should remove the "need authorization" from the standards of review for RPS power purchase agreements.

UCS supports improving the efficiency of the advice letter review process. However, UCS remains very concerned that the Commission is establishing a "need authorization" criterion for PPA approval based on consistency with the Renewable Net Short ("RNS") calculation in a way that inappropriately creates a ceiling on RPS procurement. Doing so directly contradicts its own efforts to work with other state agencies on longer term policy efforts to lower greenhouse gas ("GHG") emissions within the electricity sector and prevents IOUs from making proactive decisions about low carbon generation investments.

Section 4.5 of the Staff Proposal would establish standards of review that PPAs would need to meet in order to be eligible for Commission approval. These standards would be applied to contracts from RPS solicitations, bilateral agreements, amended contracts, "non-standard" contracts, and contracts for unbundled renewable energy credits. The first

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"reasonableness review criterion" listed in Tables 2-6 appears to require that each PPA must be "consistent with the RPS net short and procurement authorization approved in IOU's most recently approved RPS procurement plan." UCS interprets this criterion to mean that any voluntary procurement that would cause an IOU to exceed its 33 percent RPS requirement (as calculated by the RNS) would be rejected by the Commission. UCS believes this standard places a *de facto* cap on RPS procurement and is not supported by the Commission's existing authority to implement the RPS. UCS believes that unless the Commission removes the "need determination" from its standards of review, the Commission risks overstepping its authority established in the RPS enabling statute and directly contradicting legislative intent in establishing the 33 percent RPS. UCS believes that any RPS-eligible procurement exceeding an IOU's RNS must be justified in individual advice letters and must meet the cost containment criteria established in California Public Utilities Code Section 399.16 (c-f). However, setting a PPA standard of review that would prevent an IOU from the opportunity to justify additional renewable energy investment beyond the 33 percent requirement is not supported by the Commission existing authority and places an unnecessary ceiling on the RPS program. Therefore, UCS respectfully requests that the Commission remove the "need authorization" from the standards of review for RPS PPAs.

Senate Bill ("SB") 2 (1X), the authorizing legislation establishing the 33 percent RPS requirement, clearly planned for the ability of retail sellers to voluntarily procure renewables beyond their RPS requirement. Section 399.15(b)(3) of the California Public Utilities Code, as amended by SB 2 (1X) read: "A retail seller may voluntarily increase its procurement of eligible renewable energy resources beyond the renewables portfolio standard procurement requirements." In 2013, the state enacted Assembly Bill ("AB") 327, which further clarified

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the intent of the state to increase renewable energy investments beyond the current RPS mandate: "(3) The commission may require the procurement of eligible renewable energy resources in excess of the quantities specified in paragraph (2)."[5] The Staff Proposal provides no explanation for how the Commission has the authority to use the RPS procurement review process to limit renewable energy procurement to 33 percent of retail sales, if such additional procurement would not violate the cost containment mechanism.

UCS believes that creating a cap on the RPS program could prevent the IOUs from making low carbon generation investments until an additional legislative mandate is established, which could take years. This is problematic for several reasons. The Air Resources Board issued an update to the AB 32 Scoping Plan in February that laid out the scientific imperative for reducing GHG emissions by 80 percent below 1990 levels by 2050 to avoid dangerous climate change.[6] In addition, published analysis indicates that a decarbonized electricity sector will need to play a central role in any economy-wide effort to drastically reduce GHG emissions.[7] There are several proceedings open at the Commission to encourage new investments in low-carbon "preferred resources" such as storage technologies, energy efficiency, and demand response. In the future, the State must look more holistically at how all of these resources will fit together to achieve a much more decarbonized electricity grid at the lowest possible cost. But although increased energy efficiency, demand response and storage will provide much needed load reductions and flexibility to the grid, these resources do not provide additional electrons. There is no question that if California is to meet long-term GHG reduction goals, it will need to invest in

[5] Cal. Pub. Util. Code section 399.15(b)(3), current statute, as amended by AB 327.
[6] California Air Resources Board, Proposed First Update to the Climate Change Scoping Plan: Building on the Framework, February 2014, http://www.arb.ca.gov/cc/scopingplan/2013_update/draft_proposed_first_update.pdf
[7] *See* J. Williams, et. a., The Technology Path to Deep Greenhouse Gas Emissions cuts by 2050; The Pivotal Role of Electricity, Vol. 335, no. 6064 at p.53-59 (Jan. 2012)

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additional sources of zero carbon electrons, especially if the State plans to electrify a large part of its transportation fleet. There are only a few ways to provide zero carbon electrons—nuclear, carbon capture and storage, and renewables. For technological, economic, and political reasons, UCS strongly believes that additional renewable energy resources are the most viable option today for adding zero carbon generation sources in California. UCS is concerned that the Staff Proposal, by creating an inflexible cap on RPS procurement, is directly contradicting the Commission's own position in public forums, and standing in the way of meeting these objectives.

For example, on April 11, 2014 the Commission submitted joint testimony with the California Energy Commission, the California Independent System Operator, and the Governor's Office to the Little Hoover Commission in advance of a hearing it held on April 24, 2014.[8] This testimony clearly indicates that a key strategy for achieving "necessary deep reductions in statewide GHG emissions" is increasing levels of renewable energy:

> The State energy and environmental agencies currently are jointly carrying out comprehensive data analyses and modeling to determine what the appropriate 2030 target should be and evaluating pathways for achieving the necessary deep reductions in statewide GHG emissions to meet this target. This evaluation will include the challenges of retrofitting existing buildings with energy efficiency improvements, attaining zero net energy goals for new buildings, and integrating *increasing levels of renewable generation* with electrification of transportation and grid operations, while ensuring system reliability and operability.[9]

Yet the "need determination" standard that the Staff Proposal would impose on RPS individual PPAs would make it impossible for the IOUs to increase levels of renewable generation. There is no reason for the Commission to build a cliff into the RPS program by

[8] Joint Testimony to the Little Hoover Commission From the Governor's Office, California Energy Commission, California Independent System Operator, and California Public Utilities Commission, April 11 , 2014, http://www.lhc.ca.gov/studies/activestudies/energygovupdate/Testimony%20April%202014/GovOffice,CEC,ISO,PUCApril2014.pdf

[9] *Id.* (emphasis added).

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establishing such a black and white standard of review. There are adequate contract review and cost containment mechanisms in place for the Commission to be able to assess the value of voluntary RPS procurement in excess of 33 percent without creating a ceiling on the entire program.

In addition, Section 4.5 D of the Staff Proposal describes standards of review for PPAs that are "beyond the scope" of the Commission's advice letter process. Although the Staff Proposal lists several situations that might cause a PPA to be "beyond the scope" of the advice letter process, procurement beyond the RNS is not mentioned.

While the Staff Proposal does not explicitly suggest this, UCS does not believe it would be appropriate to require PPAs that would exceed an IOU's RNS to be reviewed through an application process. Rather, an IOU should be able to justify the reasons for additional renewable energy procurement beyond the RNS in a Tier 3 advice letter.

IV. The Commission should clarify that approval of RPS shortlists will not be delayed if total procurement would exceed an IOU's RNS.

It is not clear to UCS that consistency with an IOU's RNS is a requirement for shortlist approval, or just a criterion that would help streamline the shortlist approval process.[10] Since the Staff Proposal would prohibit any project on the shortlist from receiving an executed PPA until after the Commission adopts the shortlist, it appears that individual contract approvals might be delayed if the shortlist included renewable procurement beyond the "need" determined by the RNS. For the reasons explained in the preceding sections of these comments, UCS requests that the Commission clarify that consistency with the

[10] *See* April 2014 Staff Proposal, p.12.

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"approved renewable net short"[11] is not a reason in itself to hold up approval of the shortlist, which would hold up approval of individual PPAs. Instead, renewable energy procurement exceeding the RNS should be considered on a contract by contract basis, and not a reason to delay approval of the shortlist.

UCS thanks the Commission for its work in this proceeding and for the opportunity to submit these comments.

Respectfully submitted,

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[11] See April 2014 Staff Proposal, p.11.

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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 May 7, 2014 in Berkeley, California.

Laura Wisland

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