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VIA E-MAIL
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California Energy Commission
Re: Docket No. 03-RPS-1078
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504

Re: 33% Renewables Portfolio Standard; Scoping Comments of Pacific Gas and Electric Company

Pacific Gas and Electric Company ("PG&E") appreciates the opportunity to provide comments regarding issue prioritization, issue identification, and options for issue resolution regarding the California Energy Commission's ("Commission") regulatory proceeding to implement the provisions of the recently-enacted SB 2 (1X)[1/], which requires the Commission to regulate and evaluate California's Publicly-Owned Utilities' ("POUs") compliance with the statutory 33% Renewables Portfolio Standard ("RPS") requirements.

I. INTRODUCTION

PG&E is committed to the State's renewable energy goals and looks forward to working with the Commission, the California Public Utilities Commission ("CPUC"), and other stakeholders to implement the new 33% RPS legislation in an efficient, cost-effective, and environmentally-protective manner. The Commission's top priority in this regulatory proceeding should be to coordinate closely with the CPUC to issue near-term decisions on key commercial issues and definitions applicable to all RPS-obligated load-serving entities ("LSEs") so that the market for RPS-eligible products can continue to develop and provide the lowest-cost renewable power. Once these critical commercial issues have been addressed, the Commission and the CPUC should implement the remaining provisions of the 33% RPS legislation keeping in mind the legislature's intent, expressed clearly in the new statute, to create a level playing field in which all but a very few California LSEs are subject to the same RPS requirements.

1/ Senate Bill 2 (2011-12 First Extraordinary Session, Stats. 2011, Ch 1) ("SB 2 (1X)").

II. ISSUE PRIORITIZATION

PG&E strongly recommends that the Commission prioritize certain implementation issues in this proceeding. The first tier of issues – those involving the definition and accounting of the product content categories[2/] and the development of rules establishing LSEs' demand for RPS resources during each compliance period – should be resolved in conjunction with the CPUC in the near-term to allow the RPS market to operate efficiently. The product content requirements should be defined in the same way for purposes of compliance for all California LSEs, and thus should be developed by the CPUC with active participation and input from the Commission along with other stakeholders and regulated entities. In particular, the statutory phrases "incremental energy," "firmed and shaped," and "unbundled" RECs should be defined the same for all RPS compliance purposes.

Similarly, banking rules that will establish the value of RPS-eligible products and demand for those products must be the same for all LSEs under the new statute,[3/] and these rules should be developed by the CPUC, again with the input and participation of the Commission, as part of the first tier issues. PG&E has recommended separately in the CPUC's 33% implementation rulemaking that the CPUC issue a final ruling resolving these first tier implementation issues by no later than October 6, 2011. PG&E requests that the Commission identify a schedule for both its POU regulatory proceeding and revisions to its RPS Eligibility Guidebook that allows for the Commission to provide input into the CPUC's rulemaking and then to incorporate the standards adopted there into the Commission's proceedings.

PG&E recognizes that because the POUs' program for enforcement of the new RPS requirements are due by January 1, 2012,[4/] the Commission will also want to include any regulations governing the setting of POU targets as part of its first implementation tier.

The remaining issues identified by the Commission during its June 17, 2011 workshop should be resolved only after these first-tier issues have been decided.

III. ISSUE IDENTIFICATION

In addition to this issues specifically identified by the Commission during the workshop, PG&E recommends that the scope of this proceeding include the following issues:

- Identification of issues that require deference to, or coordination with, the CPUC in order to ensure consistency required by the statute, and the optimal process to achieve any such coordination. This should be a Tier 1 priority to avoid regulatory inefficiency.

2/ *See* Cal. Pub. Util Code §§ 399.16(c); 399.30(c)(3). This and all remaining citations in this letter to the California Public Utilities Code are to the sections as amended by SB 2 (1X), which will only become effective 91 days after the close of the Special Session of the legislature.

3/ *See id.* at §§ 399.13(a)(4)(B); 399.30(d)(1).

4/ *Id.* at §399.30(e).

- The detailed standards and processes by which POUs may seek eligibility to comply with the 33% RPS statute pursuant to the exceptions provided for at Sections 399.30(h), (i), and (j). This can be resolved after the Tier 1 issues.

IV. PRELIMINARY COMMENTS ON ISSUE RESOLUTION

Recognizing that stakeholders, including PG&E, are still developing their proposals for implementation of the 33% RPS statute, PG&E offers the following initial suggestions for issue resolution. PG&E appreciates the Commission's statement at the workshop that parties will be provided with additional opportunities to comment in more detail later in this proceeding. In this regard, PG&E recommends that the CPUC and the Commission jointly seek further comments on the Tier 1 issues identified above.

A. Do POU 33% RPS standards and rules need to be identical to those governing retail sellers?

Parallel requirements for POUs and other LSEs in the RPS statute were meant to provide a level playing field and must be implemented in the same manner with the same compliance requirements. Different POU requirements for banking, enforcement waivers or deferrals, and cost limitations would fail to ensure that such requirements are "consistent with" or applied in "the same manner" as those for other LSEs, as required by the statute.[5/] Moreover, the goal of efficient use of regulatory agency resources weighs heavily in favor of defining a single set of rules for all California LSEs, other than the very few exceptions clearly spelled out in the statute, rather than having two different agencies crafting different interpretations of the same statutory language. Finally, the need for the development of an efficient renewable energy market demands consistent definitions for RPS-eligible products for all RPS compliance purposes. Having different definitions of "firmed and shaped" products, for example, would massively complicate the ability of renewable developers to participate in California's market, thereby increasing the ultimate expense of the RPS program borne by California electricity consumers.

B. REC-Related Issues and Definitions

In its workshop, the Commission identified the issues of "eligibility of TRECs" and "how to verify TRECs" as within the scope of the proceeding. As an initial matter, PG&E recommends here, and has recommended at the CPUC, that the use of the phrase Tradable Renewable Energy Credits, or TRECs, should be discontinued in favor of the term "unbundled RECs" used in SB 2 (1X). The term TRECs was used very specifically by the CPUC in its decision authorizing the use of unbundled RECs for RPS compliance.[6/] As defined by the CPUC, TRECs may now be within any one of three different product content requirement categories established by SB 2 (1X). Accordingly, the continued use of the phrase TRECs will likely create confusion.

5/ *See generally id.* § 399.30(d).
6/ *See* CPUC Decision 10-03-021, as modified by Decision 11-01-025.

The eligibility of unbundled RECs for the new RPS Program is a sub-issue within the Tier 1 priority of defining the new product content requirements. It is important to note that, contrary to the implication of comments made by Commission staff during the workshop, not all unbundled RECs will be automatically in the "third bucket." Specifically, unbundled RECs associated with energy that meets the "first bucket" category because it was interconnected to a California Balancing Authority or generated behind-the-meter on a distribution system within California should be eligible as "first bucket" products. The "third bucket" products are, by definition, only those unbundled RECs that do not qualify to be in one of the other two buckets.[7/]

With regard to verification of purchases of unbundled RECs, PG&E presumes that this will continue to occur through registration and retirement of the RECs in WREGIS. One sub-issue that the Commission may need to consider is whether modifications will be necessary to the WREGIS system to track the "bucket" in which any unbundled REC falls for purposes of secondary market trading. In other words, the verification and tracking system needs to ensure that a "first bucket" unbundled REC continues to maintain that "first bucket" attribute no matter how many times it is traded prior to retirement.

Finally, the Commission and the CPUC will need to confirm that all RECs can be unbundled, traded, and retired into WREGIS for purposes of compliance at any time during the 36 month "shelf life" provided for in the statute,[8/] notwithstanding any possible interpretation of the banking provisions that would LSEs' ability to bank "bucket 3" products.[9/]

C. Is coordination necessary with the CPUC regarding the definition of delivery?

Because delivery will no longer be a requirement for RPS eligibility under the new statute, the Commission need not address delivery as a general matter in its Guidebook.[10/] However, the Commission's past work defining the type of RPS contracts that constitute delivery, including firmed and shaped products, have been tested over time and found to be workable in the commercial market. Accordingly, PG&E recommends that the Commission collaborate with the CPUC, and that the CPUC adopt to the maximum extent feasible, the Commission's prior definitions as part of the CPUC's definitions for the new product content requirements.

7/ *See* Cal. Pub. Util Code §§ 399.16(b)(3) (as amended by SB2 (1X) and pending effectiveness) (defining the third bucket as "[e]ligible renewable energy resource electricity products . . . including unbundled renewable energy credits, *that do not qualify under the criteria of [buckets 1 or 2]*.") (emphasis added).

8/ *See Id.* at § 399.21(a)(6).

9/ PG&E does not agree with this possible interpretation of the banking provisions. Rather, Section 399.13(a)(4)(B) provides that "Bucket 3" products may not be considered "excess procurement," and so will never be a product that needs to be banked under that provision.

10/ While the 33% RPS statute continues to use the word "delivered" in its definition of a REC for purposes of issuing a WREGIS certificate, the best harmonization of this use with the removal by the legislature of the delivery requirements from the remainder of the statute is to define "delivered" in Section 399.12(h)(1) as requiring the electricity associated with a REC to be delivered or consumed at any point within the WECC, which is the functional area covered by WREGIS.

V. CONCLUSION

PG&E appreciates the opportunity to provide scoping comments in this proceeding and urges the Commission to both: (1) ensure that its implementation of the 33% RPS legislation is coordinated closely in both substance and schedule with the CPUC; and (2) ensure that the legislative intent of achieving a level playing field among California's RPS-obligated LSEs is achieved.

Best regards,

/s/

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