BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of Renewables Portfolio Standards (RPS) 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities	Docket Nos. 11-RPS-01 & 03-RPS-1078

COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE 33% RPS PRE-RULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES

Kristin Burford
Policy Director
Large-scale Solar Association
1330 Grand Ave.
San Rafael, CA 94901
kristin@consciousventuresgroup.com

March 30, 2012

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of Renewables Portfolio Standards (RPS) 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities	Docket Nos. 11-RPS-01 & 03-RPS-1078

COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE 33% RPS PRE-RULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES

The Large-scale Solar Association (LSA) submits these comments on the California Energy Commission (CEC) Draft Staff Report *33% Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations*. These comments focus on ensuring that the regulations set California on the path to achieving the RPS goals embodied in the 33% statute and ensuring that the rules appropriate reflect the statutory requirements.[1] Our comments are focused on the specific sections of the draft regulations that we believe may run afoul of these principles.

Section 3204 - RPS Procurement Requirements

LSA is very concerned about the extremely broad definition of "reasonable progress" provided in the draft regulations. SBx1 2 requires that "[t]he quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources

[1] SBx1 2 (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session). Unless otherwise noted, statutory cites refer to the Public Utilities Code sections that were included in the bill.

achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020." (§ 399.30(c)(2)). The language of the statute is clear that reasonable progress should be reflected as a quantitative increase in the amount of renewable energy resources. The CEC's draft regulations, however, appear to allow POUs to have NO quantitative increase in procurement during the compliance periods. Instead, the regulations recharacterize reasonable progress to include a laundry list of planning activities,[2] which do not result in quantitative progress towards the RPS goals.

In brief,[3] LSA supports the approach adopted by the CPUC of defining a straight-line trend as the appropriate measure of "reasonable progress," as this approach helps to ensure steady progress toward the goal of 33% renewables.[4] The risk of noncompliance is far greater if procurement is only required to "jump" to the target in the final year; this far riskier approach threatens the ability for California to achieve the legislatively mandated goals. The compliance periods provide significantly more flexibility to manage lumpy procurement; the proposed approach in the draft regulations actually multiplies the risk of procurement failures leading to noncompliance. Indeed, allowing purchasers to multiply their risk by relying on a single, much larger procurement increase in the final year of the compliance period exacerbates the very problem that the multi-year compliance periods were intended to solve.

---

[2] According to Section 3204(d) of the draft regulations, "[r]easonable progress may include, but is not limited to, acquiring and developing new renewable resources, transmission modeling, land acquisition, initiating environmental studies, securing permits, soliciting requests for offers, executing contracts, and signing interconnection agreements."

[3] In the attached comments (submitted jointly from LSA and the California Wind Energy Association to the CPUC), LSA's position on reasonable progress is described in detail.

[4] CPUC Decision 11-12-020 (issued December 5, 2011), p. 12-15.

In addition, the required procurement targets for each compliance period, included in Section 3204(a)(1) and (a)(2), should incorporate the quantitative measure of reasonable progress. These compliance targets should focus not just on the meeting the goal in the final year of the compliance period, but should reflect the statutorily required quantitative "reasonable progress" towards the overall specific RPS goals identified in the statute.

Section 3202: Qualifying Electricity Products

LSA requests additional information on the resources and the amount of megawatts that fall under the definition in Section 3202(a)(3)(A). Specifically, this subdivision encompasses "electricity products are associated with generation from a facility that does not meet the definition of a 'renewable electric generation facility' but does meet the Commission's RPS eligibility requirements that were in effect prior to June 1, 2010, when the original procurement contract or ownership agreement was executed by the POU, and the facility is RPS-certified." Section 3202(a)(3) specifies that such resources "count in full" towards procurement targets if they were procured pursuant to a contract or ownership agreement before June 1, 2010.

Title 20, CCR, Section 1240: Renewables Portfolio Standard Enforcement

To provide accountability and oversight for the RPS program, the regulations should give concerned parties the ability to raise concerns about noncompliance with the RPS requirements (both statutory and from the CEC) and participate in

enforcement actions. Accountability and oversight serve a critical function by providing for transparency of the RPS program and maintaining the focus on achieving the RPS goals.

CONCLUSION

LSA appreciates the opportunity to comment on the Draft Regulations. We encourage the CEC to ensure that these regulations set California on the path to achieving the RPS goals embodied in the 33% statute by ensuring quantitative "reasonable progress" towards the goal, to provide additional clarification of the scope of the proposed provisions regarding pre-June 2010 qualifying resources, and to provide for robust oversight and accountability to ensure that the RPS goals and requirements are being met.

Respectfully submitted,

__/s/_____
Kristin Burford
Policy Director, Large-scale Solar Association

March 30, 2012

ATTACHMENT FOR COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE 33% RPS PRERULEMAKING DRAFT REGULATIONS FOR PUBLICLY OWNED ELECTRIC UTILITIES (March 30, 2012)

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 NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Shannon Eddy
Executive Director
Large-scale Solar Association
2501 Portola Way
Sacramento, California 95818
Telephone: (916) 731-8371
Email: eddyconsulting@gmail.com

On behalf of Large-scale Solar Association

Nancy Rader
Executive Director
California Wind Energy Association
2560 Ninth Street, Suite 213A
Berkeley, California 94710
Telephone: (510) 845-5077
Email: nrader@calwea.org

On behalf of California Wind Energy Association

August 30, 2011

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 NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

I. INTRODUCTION

Pursuant to the *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program* issued by Administrative Law Judge ("ALJ") Simon on July 15, 2011 ("ALJ Ruling"), the California Wind Energy Association ("CalWEA") and the Large-scale Solar Association ("LSA") respectfully submit these comments on various issues described in the ALJ Ruling.

The ALJ Ruling provided four guiding principles to be taken into account in responding to the questions it posed. To paraphrase, (1) proposals should further the fair, efficient, and transparent administration of the Renewables Portfolio Standard ("RPS") program; (2) proposals should lead to RPS market certainty; (3) proposals should resolve issues raised by the transition from the current RPS program to the RPS program under SB 2 (1x); and (4) proposals should

avoid creating new issues in the transition from the current RPS program to the RPS program under SB 2 (1x).[1]

CalWEA and LSA support the four guiding principles, and offer three additional principles that have guided the responses below: (1) implementation of the RPS program under SB 2 (1x) should recognize that the new RPS program is intended to apply to RPS procurement on and after January 1, 2011; (2) elements of the existing RPS program that appear to be working and remain consistent with the requirements SB 2 (1x) should be retained for simplicity and continuity; and (3) the California Public Utilities Commission ("Commission") should try to keep the requirements of the new RPS program as simple as possible.

Responses to specific selected questions posed in the ALJ Ruling are set forth below.

II. DISCUSSION

1. Should the transition from the current RPS program (20% of retail sales from RPS-eligible generation by the end of 2010) ("20% program") to the RPS program as revised by SB 2 (1x) (33% of retail sales from RPS-eligible generation by the end of 2020) ("33% program") start from the position that the procurement and flexible compliance rules for the 20% program apply through the 2010 compliance year and the procurement and compliance rules for the 33% program apply beginning with the 2011 compliance year (making allowance for the special provision in new § 399.15(a))?

Yes. The 20% program was tailored to the particular requirements of legislation establishing a 20% by 2017, and later 20% by 2010, goal for renewable energy procurement in the State. In contrast, the 33% program must be tailored to the specific requirements of SB 2 (1x), which is designed to move the State forward from its 2010 position towards a new goal of procuring renewable energy equal to 33% of retail sales by 2020. Because the 20% and 33% programs are governed by different statutory requirements, the programs will have different rules. The seams created by trying to overlap the two programs raise a host of difficult issues, as highlighted by many of the questions posed in the ALJ Ruling. To simplify administration of the

[1] ALJ Ruling at 3-4.

RPS program, the Commission should establish a clean break between the end of the rules for the 20% program and the beginning of the rules for the 33% program as of January 1, 2011.

Moreover, applying the 33% program to the 2011 compliance year is necessary to comply with the intent of SB 2 (1x), which presents the Legislature's framework for renewable energy procurement in California for the period beginning January 1, 2011. This intent is evidenced by the Legislature's choice of an initial compliance period from January 1, 2011, through December 31, 2013, inclusive.[2] To avoid thwarting the Legislature's intent, the 33% program must be applied to all RPS procurement on and after January 1, 2011.

2. New § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them.

- **Should compliance targets for intervening years in the 2011-2013 compliance period be set as:**
  -- 20% of retail sales for the year ending December 31, 2011;
  -- 20% of retail sales for the year ending December 31, 2012;
  ending with
  -- 20% of retail sales for the year ending December 31, 2013, such that the RPS obligation (compliance period quantity) of a retail seller for the 2011-2013 compliance period would equal in megawatt-hours (MWh): (.20 x 2011 retail sales) + (.20 x 2012 retail sales) + (.20 x 2013 retail sales)?

Yes. New Section 399.15(b)(2)(B) requires the Commission to establish a procurement requirement equal to an average of 20% of retail sales. The simplest approach to attaining a procurement target of 20% over three years is to set the annual targets for each of the intervening years at 20% of the applicable year's retail sales. Furthermore, applying these targets for the first compliance period best aligns the procurement goals of the 20% and the 33% programs by maintaining the 20% program's goal of 20% of retail sales throughout the first compliance

[2] *See* new § 399.15(b)(2)(B).

period, rather than allowing the State's RPS goals to be reduced from the 2010 target of 20% of retail sales.

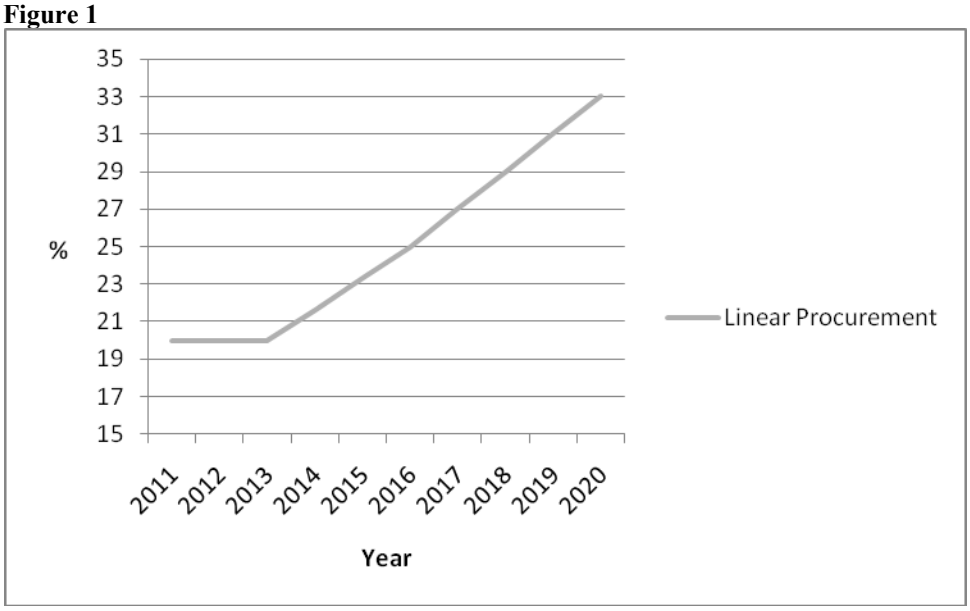
- **Should different compliance targets for intervening years be set for this period? Why or why not?**

No. The requirement to establish a procurement requirement of an average of 20% of retail sales for the first compliance period does not include the concept of "reasonable progress in each of the intervening years" that is expressly applied to the second and third compliance periods. Thus, the simplest approach is to set the annual targets for each of the intervening years at 20% of the applicable year's retail sales.

- **Should targets for intervening years in the 2014-2016 compliance period be set using a linear trend:**
  -- 21.5% of retail sales by December 31, 2014;
  -- 23.5% of retail sales by December 31, 2015; ending with
  -- 25% of retail sales by December 31, 2016,
  such that the compliance period quantity for the 2014-2016 compliance period would equal in MWh: (.215 x 2014 retail sales) + (.235 x 2015 retail sales) + (.25 x 2016 retail sales)?

Yes. The targets for intervening years should be set based on a linear trend because this approach results in "reasonable progress in each of the intervening years" as required by new Section 399.15(b)(2)(B). Setting targets for intervening years based on a linear trend results in "progress" because it reflects the need for utilities to steadily increase procurement each year. And such an approach is "reasonable" because it indicates ratable procurement, which allows the utilities to spread out the increased procurement requirement over time, while avoiding the increased risk of non-compliance associated with a single large increase in procurement at the end of a compliance period (see Figure 1 below).

Figure 1



While some may argue that the nature of transmission and generation development is inconsistent with procurement targets based on a linear trend because it results in "lumpy" additions of renewable energy to the system, the utilities have several tools available to manage any perceived risk associated with "lumpy" procurement:

(1) A utility's compliance with its RPS procurement requirements is evaluated based on total RPS-eligible procurement over the compliance period, not procurement in a specific intervening year.[3] In other words, each utility's performance during a multi-year compliance period is evaluated based on the sum of its parts – if the utility is short in one year, it can make up for the shortfall by over-procuring in a subsequent year within the same compliance period. This provides the utilities with a great deal of flexibility to manage its procurement obligations within the compliance period (i.e., the utility can still create its own internal annual targets so long as it procures the total required amount over the compliance period). Thus, if a utility is concerned that it cannot meet the

[3] *See* new § 399.15(b)(2)(C).

procurement target in Year 1 of a compliance period because a major transmission addition needed to bring additional renewable generation to the system will not be complete until Year 2 of the compliance period, the utility can still achieve compliance over the entire compliance period by over-procuring RPS-eligible energy in Year 2 (relative to its Year 2 interim target) by enough to compensate for its Year 1 shortfall.

(2) The utilities have the ability to structure their power purchase agreements ("PPA") with renewable energy sellers in a manner that provides the utility with an ability to accelerate deliveries from projects that may be waiting for transmission upgrades to be built. For example, the California Independent System Operator Corporation's ("CAISO") *pro forma* Generator Interconnection Agreement ("GIA") includes a provision that allows an interconnection customer to request an operating study to determine the conditions under which the interconnection customer's generating facility can interconnect to the transmission grid prior to the completion to some portion of the interconnection facilities, distribution upgrades, and/or network upgrades that have been identified as necessary for the facility.[4] Pacific Gas and Electric Company's ("PG&E") 2011 *pro forma* PPA already includes provisions that provide PG&E the right to direct the seller to pursue a limited operation study and interconnect its generating facility on a limited operation basis.[5] By including this type of provision in its PPAs, a utility would have the flexibility to accelerate RPS-eligible energy deliveries. Thus, if a utility is concerned that it cannot meet the procurement target in Year 1 of a compliance period because a major transmission addition needed to bring additional renewable generation with PPAs with the utility to the system will not be complete until Year 2 of the compliance period, the

[4] *See* CAISO Tariff Appendix CC § 5.9.
[5] *See* PG&E 2011 *pro forma* PPA § 3.1(h)(ii).

utility may still be able to achieve its Year 1 interim target by directing those sellers to interconnect their generating facilities on a limited operation basis during Year 1.

(3) Even if a utility is unable to meet its procurement targets despite the flexibility described in (1) and (2) above, the utility is still entitled to claim one or more of the statutory excuses. New Section 399.15(b)(5) provides that the Commission shall waive enforcement if the utility demonstrates that, for reasons beyond its control, the utility will not achieve compliance because of inadequate transmission, inadequate RPS-eligible energy supply, RPS-eligible generators with PPAs have been delayed by permitting or interconnection delays, or unanticipated curtailment of RPS-eligible generation. Thus, if a utility is concerned that it will not be able to meet its interim procurement targets in a compliance period because a major transmission addition needed to bring additional renewable generation to the system will not be complete until the end of the compliance period for reasons beyond the utility's control, the utility cannot accelerate procurement from projects relying on this transmission addition because limited operation is not technically feasible, and there are no other available sources of RPS-eligible energy, the Legislature has already provided a solution – the utility can seek a waiver of enforcement as provided in the statute. There is no need for the Commission to mitigate this risk by reducing interim procurement targets.

- **Should targets for intervening years in the 2017-2020 be set using a linear trend:**
  -- 27% of retail sales by December 31, 2017;
  -- 29% of retail sales by December 31, 2018;
  -- 31% of retail sales by December 31, 2019; ending with
  -- 33% of retail sales by December 31, 2020, and thereafter,
  such that the compliance period quantity for the 2017-2020 compliance period would equal in MWh: (.27 x 2017 retail sales) + (.29 x 2018 retail sales) + (.31 x 2019 retail sales) + (.33 x 2020 retail sales)?

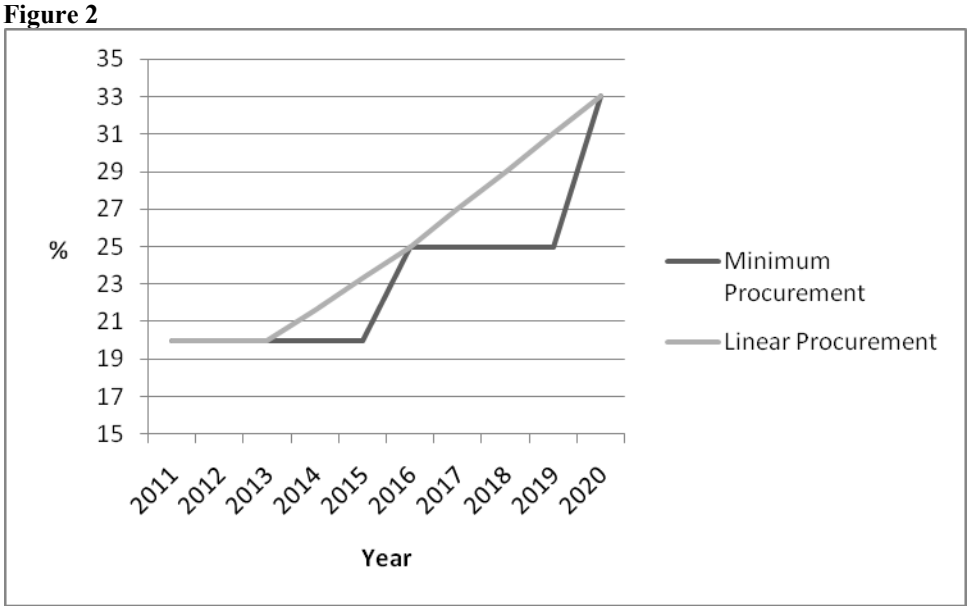
Yes, see response above.

- **Should different targets for intervening years be set for either of these compliance periods? Why or why not?**

No. As described above, a linear approach ensures reasonable progress towards the 25% and 33% statutory targets, without placing excessive emphasis on incremental procurement in any given year. Moreover, the utilities' ability to freely structure procurement within a compliance period, negotiate PPA terms to allow acceleration of RPS-eligible energy procurement, and seek waiver of enforcement based on the statutory excuses provides substantial flexibility for the utilities to manage any variance in expected transmission and generation additions.

If, however, the Commission is inclined to reduce the near-term interim procurement targets, it should avoid a "minimum overall procurement" scenario in which the utilities are not required to increase procurement above previous levels until the last year of a compliance period (see Figure 2 below). Such an approach would be contrary to the statute's requirement that the interim targets reflect "reasonable progress in each of the intervening years" because (1) there would be no progress in the intervening years, and (2) the interim targets would not be reasonable because they would increase the risk of non-compliance by shifting the incremental procurement to the end of the compliance period, which would not provide the utility with any time to over-procure as needed to make up for variations in expected RPS-eligible supply additions.

Figure 2

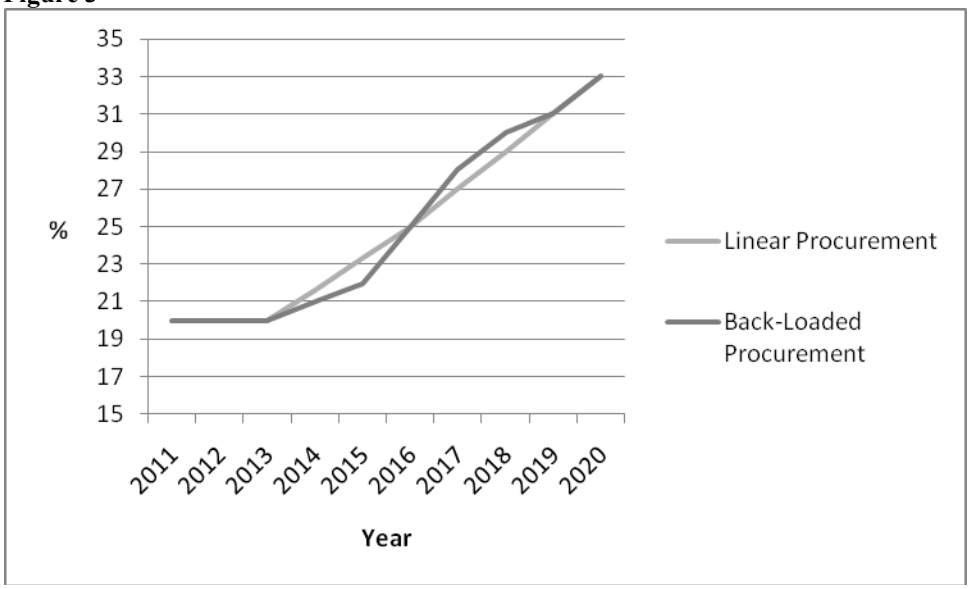


Instead, the Commission should add any relief afforded to the utilities in the second compliance period to the total procurement obligations in the third compliance period. In other words, the Commission should use the linear approach as a baseline, and any reduction in the amount of total procurement that would have been required in the second compliance period should be added to the total procurement that would have been required in the third compliance period (see Figure 3 below). This approach would provide near-term relief for the utilities, to the extent that the Commission believes it is necessary, without reducing the total expected level of RPS-eligible energy procurement and its associated economic and environmental benefits.

While this approach would require increased procurement in the third compliance period, it would not violate the prohibition in new Section 399.15(b)(9) against adding deficits in one compliance period to procurement requirements in a later compliance period. Here, it is a reduction in the compliance obligation in the second compliance period that forms the basis of the increased compliance obligation in the third compliance period. Unlike the deficits that cannot be carried forward under new Section 399.15(b)(9), under this proposal the utility will

know in advance that it is not required to procure the higher amount of renewable energy and will not be subject to penalty for failing to procure the higher amount of renewable energy.

Figure 3



- **What are the consequences, if any, of a retail seller attaining the target in the final year of the compliance period (e.g., 25% of retail sales in 2016), but failing to procure "the quantities associated with all intervening years" by the end of that compliance period?**

New Section 399.15(b)(2)(C) is clear that the retail seller is required to procure no less than the quantities required with all intervening years by the end of the compliance period. This provision is equally clear that the retail seller is not required to demonstrate a specific amount of procurement in an individual intervening year. These provisions are not in conflict. Rather, the retail seller is subject to two compliance obligations – (1) the retail seller must procure a total amount of RPS-eligible energy over the compliance period that is no less than the sum of the requirements for each year of the compliance period, and (2) the retail seller must procure an annual amount of RPS-eligible energy in the final year of the compliance period that is no less than the amount required in the statute. Thus, in the example provided, the retail seller has failed to meet its RPS procurement obligations because it has not procured the total quantity of RPS-

eligible energy required for the compliance period. The retail seller should be subject to penalties in accordance with Decision 03-06-071 and Decision 03-12-065,[6] unless the Commission waives enforcement pursuant to new Sections 399.15(b)(5)-(7).

6. New § 399.13(b) amends current § 399.14(b). In D. 07-05-028, the Commission implemented current § 399.14(b) by requiring that retail sellers enter into contracts for a minimum quantity of 0.25% of the prior year's retail sales that have a minimum duration of 10 years (long-term contracts), or are with RPS-eligible generation facilities commencing commercial operation on or after January 1, 2005. This obligation ends when a retail seller reaches the goal of 20% of retail sales obtained from eligible renewable resources. (D.07-05-028, OP 5.)

- **How should the Commission determine the minimum quantity under new § 399.13(b)? Please provide a sample calculation using the proposed method.**

The existing requirement appears to have established some semblance of balance between the need for long-term contracts to stimulate new projects and the flexibility to use short-term contracts. For simplicity and continuity, the Commission should retain, at the very least, the existing requirement in Decision 07-05-028 that retail sellers must enter into long-term contracts for a minimum quantity of 0.25% of the prior year's retail sales in order to be eligible to enter into short-term contracts. For each calendar year, the calculation would consist of the product of (a) the utility's retail sales for the prior calendar year, and (b) the constant 0.0025.

- **Should the minimum quantity include specific minimum quantities of procurement from long-term contracts in any or all of the portfolio content categories identified in new § 399.16(b)?**

No. The portfolio composition requirements set forth in new Section 399.16(c) will ensure appropriate distribution of procurement across the portfolio content categories. Further granularity for the minimum long-term contract requirement is not necessary.

[6] However, deferral of a shortfall must be eliminated as an option. See response to question number 16 below for additional recommendations relating to the appropriate application of penalties under the 33% program.

- **Should the minimum quantity requirement under new § 399.13(b) carry forward the requirement in D.07-05-028 that the long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts sought to be counted for RPS compliance? If not, what basis for accounting for the minimum quantity of long-term contracts should be used?**

Yes. The current RPS procurement program is largely focused on annual solicitations. The existing requirement aligns with this structure by requiring the short-term contracts to be signed in the same year as the long-term contracts that are used to meet the minimum long-term procurement requirement. Thus, the existing requirement should be carried forward.

- **How should deliveries in 2011 and later years from short-term contracts entered into in 2010 and earlier years, and in compliance with D.07-05-028, be treated?**

Deliveries in 2011 and later years from short-term contracts entered into prior to 2011 and in compliance with D.07-05-028 should be treated the same as deliveries in 2011 and later years from short-term contracts entered into after January 1, 2011 and in compliance with the new requirements. In other words, such procurement should not be "grandfathered" in any way, except to the extent set forth in Section 399.16(d).

- **Should such deliveries be deducted from actual procurement quantities as part of the calculation of excess procurement that may be applied to a subsequent compliance period pursuant to new § 399.13(a)(4)(B)?**

Yes. New Section 399.13(a)(4)(B) expressly requires that deliveries from short-term contracts must be deducted in the calculation of excess procurement. See response to question number 7 below.

- **Should short-term contracts entered into in 2011 but prior to the effective date of SB 2 (1x) be treated differently? Why or why not?**

No. Because the new restriction on short-term contracts would be exactly the same as the existing restriction on short-term contracts, retail sellers should not be able to claim any type of retroactive rulemaking.

7. New § 399.15(b) sets out three metrics for procurement requirements in a compliance period:

1. For the 2011-2013 compliance period, attaining an average of 20% of retail sales in that period.
2. For the 2014-2016 and 2017-2020 compliance periods, attaining a target of a percentage of retail sales by the end of the compliance period (25% by December 31, 2016 and 33% by December 31, 2020).
3. For all compliance periods, procuring no less than the quantities associated with all intervening years by the end of the compliance period.

- **Please propose a method of calculating any excess procurement that may be carried over from the 2011-2013 compliance period to the 2014-2016 compliance period. Please provide a sample calculation.**

The statute is drafted as a simple calculation, and this simplicity should be retained by the Commission. Excess procurement for the first compliance period should be calculated as (a) total RPS-eligible energy claimed for compliance from January 1, 2011 to December 31, 2013, inclusive; less (b) the sum of 20% of retail sales for 2011, plus 20% of retail sales for 2012, plus 20% of retail sales for 2013; less (c) the RPS-eligible energy generated or claimed for compliance during the period from contracts with a duration of less than 10 years, irrespective of the underlying contracts' grandfathered status under new Section 399.16(d); less (d) the RPS-eligible energy generated or claimed for compliance during the period comprised of electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16, irrespective of the underlying contracts' grandfathered status under new Section 399.16(d).

While new Section 399.16(d) provides for contracts executed prior to June 1, 2010, and meeting other defined criteria, to be "counted in full towards the procurement obligations established pursuant to this article," new Section 399.13(a)(4)(B) is not a "procurement

obligation." Rather, it is an express limitation on the ability to bank certain types of procurement for purposes of meeting "the procurement obligations established pursuant to this article." As such, RPS-eligible energy from short term contracts or classified under paragraph (3) of subdivision (b) of new Section 399.16 that is generated or procured during a compliance period should be deducted from total procurement during such compliance period without regard to when the contracts were executed.[7]

There should be no limit on the forward banking of any excess procurement of RPS-eligible energy classified under paragraphs (1) or (2) of subdivision (b) of new Section 399.16. Unlimited forward banking encourages accelerated procurement, which provides for a more robust market and greater overall environmental benefits. In addition, the calculation of excess procurement already includes protections to ensure that excess procurement is not based on procurement of unbundled RECs or from short-term contracts.

- **Should the method you propose also be used for calculating any excess procurement that may be carried over from the 2014-2016 compliance period to the 2017-2020 compliance period? If not, please propose another method. Please provide a sample calculation for your method.**

Yes, the same method should be used for both the 2014-2016 and the 2017-2020 compliance periods.

- **Please discuss the relationship of the method(s) you propose to your response to #2, above, relating to the calculation of RPS procurement obligations for compliance year 2011 and future years pursuant to new § 399.15(b).**

The method for calculating the total procurement obligation over a compliance period that is described in response to question number 2 above would be the amount used in item (b) of the calculation described here in question number 7.

[7] *See* Reply Comments of LSA on Portfolio Content Categories, R. 11-05-005, at 5.

8. Current RPS rules set out a system of procurement banking different from that in new § 399.13(a)(4)(B). With respect to forward banking under the provisions of SB 2 (1x), please comment on the following possibilities. Please provide detailed support and examples. Please specifically address the application of new §§ 399.15(a) and 399.16(d) to your proposal.

- **Should the Commission allow unlimited forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for all compliance periods?**

- **Should the Commission allow no banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for any compliance period later than 2010?**

- **Should the Commission allow forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts through the 2011-2013 compliance period but not beyond 2013?**

- **Should the Commission make some other provision for banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts?**

- **Should any banked procurement be counted in years after 2010 only in accordance with the limits on the use of specific portfolio content categories set out in new § 399.16(c)?**

Excess RPS-eligible energy generated or procured prior to January 1, 2011 should not be permitted to apply towards satisfaction of post-January 1, 2011 compliance obligations. SB 2 (1x) presents the Legislature's framework for RPS procurement in California for the period beginning January 1, 2011. For example, the first compliance period begins January 1, 2011.[8] Likewise, new Section 399.13(a)(4)(B) directs the Commission to adopt rules for forward banking of RPS-eligible procurement beginning January 1, 2011. Nowhere does the statute address or appear to contemplate carry-over of excess compliance from the pre-2011 period.

Moreover, allowing banking of excess pre-2011 procurement would result in a skewed transition to the 33% program. New Section 399.15(a) prohibits the application of any pre-2011 RPS-eligible energy procurement deficit from being applied to procurement requirements under

[8] *See* new Section 399.15(b)(1)(A).

the 33% program if a retail seller procured RPS-eligible energy equal to at least 14% of retail sales in 2010. In other words, the 33% program is expected to result in a fresh start for compliance periods. However, if the Commission permits excess pre-2011 procurement to be applied to post-2011 RPS procurement obligations, certain retail sellers will achieve a head start instead of a fresh start, the effect of which will be to diminish future deliveries of renewable energy and receipt of the corresponding benefits of greenhouse-gas and other emissions reductions. In erasing past deficits, we do not believe that the Legislature intended also to erase future progress.

11. Since SB 2 (1x) will not become effective until, at the earliest, the last quarter of 2011, should the current flexible compliance rules apply to RPS procurement for 2011?

No. As discussed in response to questions number 1 and 8 above, SB 2 (1x) presents the Legislature's framework for RPS procurement in California for the period beginning January 1, 2011. As such, the 33% program should be applied to all RPS procurement beginning January 1, 2011.

In addition, new Section 399.15(b)(1)(A) establishes a compliance period of January 1, 2011 to December 31, 2013, inclusive, and the Commission will be responsible for measuring compliance with the procurement obligations applicable to this compliance period. To determine whether the compliance obligations associated with this compliance period have been met, the Commission will either have to administer two sets of rules or the rules applied to procurement during the compliance period must be uniform. Thus, for ease of administration, the Commission should apply the 33% program to all RPS procurement beginning January 1, 2011.

12. In the current RPS flexible compliance regime, a retail seller is allowed to defer a shortfall of up to 0.25% of APT without explanation, so long as the deficit is made up

within three years. Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- **For years after 2010, should the Commission eliminate its current rule allowing deferral of 0.25% of APT without explanation, so long as the deficit is made up within three years?**

Yes. New Section 399.15(b)(9) expressly provides that deficits associated with one compliance period will not be added to a subsequent compliance period. Thus, allowing deferral across compliance periods would be contrary to the statute. In addition, new Section 399.15(b)(2)(C) provides that a retail seller is not required to procure a specific amount of RPS-eligible energy in an individual intervening year, which allows for unlimited deferral within a compliance period, subject to the true-up at the end of the compliance period. Therefore, there is no longer a need for the existing rule.

13. In the current RPS flexible compliance regime, a retail seller is allowed to defer a deficit in excess of 0.25% of APT by the use of any allowable reason for noncompliance (e.g., "earmarking.") Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- **For years after 2010, should the Commission eliminate its current rule allowing deferral of deficits in excess of 0.25% of APT through earmarking?**

Yes. New Section 399.15(b)(9) provides that deficits associated with one compliance period will not be added to a subsequent compliance period. Retaining the current rule allowing deferral across compliance periods would be contrary to the statute, and thus the current rule must be eliminated.

- **How should the Commission treat RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013?**

  -- Should the RECs be allocated to the portfolio content categories (and their respective limits) of new § 399.16?

  -- Should the RECs be allocated to the procurement categories that applied in the year in which the contract was signed? How would these categories connect to the portfolio content categories of new § 399.16?

SB 2 (1x) presents the Legislature's framework for RPS procurement in California for the period beginning January 1, 2011. Therefore, for purposes of evaluating compliance with the new compliance periods beginning January 1, 2011, the Commission should ignore whether a given contract has previously been earmarked and apply the provisions of SB 2 (1x) to the RPS-eligible energy generated and procured under that contract during the applicable compliance period. To the extent that the contract was signed prior to June 1, 2010 and meets the enumerated conditions, it would be eligible for the "grandfathering" elements of new Section 399.16(d). To the extent that the contract was signed after June 1, 2010 or fails to meet the enumerated conditions for contracts signed prior to June 1, 2010, it would be subject to the portfolio content limitations of new Section 399.16(c).

16. In D.03-06-071 and D.03-12-065, the Commission set the basic parameters for enforcement of RPS obligations. Among other things, the Commission set a penalty amount for retail sellers failing to meet their annual RPS obligations at $0.05/kilowatt-hour (kWh) for each kWh below the annual procurement target, with an annual cap of $25,000,000.

- **To what obligation should a penalty apply?**
  -- the goal at the end of each compliance period (i.e., average of 20% for 2011-2013; 25% by the end of 2016; 33% by the end of 2020);
  -- the compliance period quantity for a particular compliance period;
  -- both of the above;
  -- another metric or quantity. Please set out the proposal in detail and explain its basis.

The basic structure for RPS obligation enforcement in Decision 03-06-071 and Decision 03-12-065 appears to have provided sufficient incentive to comply to date. In the interest of simplicity and continuity, this basic enforcement structure should be retained.

However, one element of the existing enforcement paradigm established by Decision 03-06-071 and Decision 03-12-065 conflicts with the terms of SB 2 (1x) and must be revised. Specifically, Decision 03-06-071 allows a utility that fails to meet its procurement requirements

to request a deferral of its shortfall if the deferral "would promote ratepayer interests and the overall procurement objectives of the RPS program."[9] However, new Section 399.15(b)(9) expressly provides that deficits associated with a compliance period shall not be added to a future compliance period. Thus, the existing RPS obligation enforcement paradigm must be revised to eliminate deferral of a shortfall as one of the remedies to be exercised by the Commission.

In response to the specific question from the ALJ Ruling posed above, the penalty should apply to both the total procurement obligation for the compliance period (which is due by the end of the compliance period) and any goal specified in new Section 399.15(b)(2)(B) for the final year of the compliance period. Thus, for the 2014-2016 compliance period, the penalty should apply if the utility failed to (1) procure RPS-eligible energy in an amount no less than the sum of the Commission-approved target for 2014, plus the Commission-approved target for 2015, plus the statutorily-required 25% of retail sales for 2016; and/or (2) procure RPS-eligible energy in amount no less than 25% of retail sales for 2016.

- **Should the penalty amount of $0.05/kWh be changed? If so, what method should be used to set a new penalty amount?**

No. The existing $0.05/kWh penalty rate should be retained.

[9] D. 03-06-071 at 52-53.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,

__/s/ Shannon Eddy_____

Shannon Eddy
Executive Director
Large-scale Solar Association
2501 Portola Way
Sacramento, California 95818
Telephone: (916) 731-8371
Email: eddyconsulting@gmail.com

On behalf of Large-scale Solar Association

__/s/ Nancy Rader_____

Nancy Rader
Executive Director
California Wind Energy Association
2560 Ninth Street, Suite 213A
Berkeley, California 94710
Telephone: (510) 845-5077
Email: nrader@calwea.org

On behalf of California Wind Energy Association

August 30, 2011

VERIFICATION

I, Nancy Rader, am the Executive Director of the California Wind Energy Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the California Wind Energy Association and the Large-scale Solar Association on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program* are true of my own knowledge, except as to the matters which are therein 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 August 30, 2011 at Berkeley, California.

_____

Nancy Rader

Executive Director, California Wind Energy Association

VERIFICATION

I, Kristin Burford, am the Policy Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Comments of the California Wind Energy Association and the Large-scale Solar Association on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program* are true of my own knowledge, except as to the matters which are therein 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 August 30, 2011 at San Rafael, California.

/s/ Kristin Burford

Kristin Burford

Policy Director, Large-scale Solar Association