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RPS-16-03 Sham Instruments

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Dear Energy Commission Commissioners,

Where the parties to a sham transaction intend to deceive third parties, considerations of public policy may sometimes preclude a defense of sham, per Witkin.

To ensure the Energy Commission precludes a defense of sham, certain definitions must be anchored in law.

Perhaps the first is definition of product. Without a clear definition of product as it applies to electricity, parties to a contract can show intent to deliver because of ambiguity.

I have asked Energy Commission staff for the Energy Commission's definition of a product as it applies to electricity. Staff have failed to provide the Energy Commission's definition of a product as applied to electricity.

The courts have definitions for product as applied to electricity, found in *Fong v. Pacific Gas And Electric* (1988) and *Pierce v. Pacific Gas and Electric* (1985).

Please remove all ambiguities to ensure contracts will meet the purpose of PUC 399.13 (b).

Do so by defining product as it applies to electricity the Energy Commission is using in rulemaking for RPS enforcement.

Table all agenda items for adoption of regulations enforcing ARTICLE 16. California Renewables Portfolio Standard Program [399.11 - 399.33] until the definition of product as it applies to electricity the Energy Commission is using is made clear to all.

Steve Uhler
sau@wwmpd.com