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RPS-16-03 Long term contract delivery requirements

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Dear Energy Commission Commissioners,

My contention:

PUC 399.13 (b) does not require contracts for delivery of products.

The word "product" or "products" do not appear in PUC 399.13 (b).

The use of the word "products" implies delivery to the consumer.

Delivery to the consumer requires contracts or ownership for use of the grid.

PUC 399.13 (b) does not mention the grid.

Regulations implementing PUC 399.13 (b) are not consistent, pursuant to GOV 11349. (d). "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

Regulations implementing PUC 399.13 (b) do not provide complete reference pursuant to GOV 11349. (e). "Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

The word "products" shall be removed from all regulations implementing PUC 399.13 (b).

My supporting argument:

ARTICLE 16. California Renewables Portfolio Standard Program [399.11 - 399.33] has not defined "delivered" as it applies to electricity since 7/23/2012 pursuant to SB1171-20112012.

Any regulations based on any prior definition of "delivered" in statutes in California Renewables Portfolio Standard Program must be amended to use the common definition of "delivered" to be consistent.

The Energy Commission does not have authority to use the word "products" in defining the subject of long terms contracts or authority to define electricity as a product that is

not consistent with Fong v. Pacific Gas & Electric Company (1988).

Electricity procured at higher voltages than usable by the consumer is not at marketable voltage and is not considered a product, see Pierce v. Pacific Gas & Electric Company (1985).

If a generator of electricity providing electricity constitutes a "product", injured plaintiffs can seek recovery under a theory of strict liability. If it is not a product, the plaintiff would have to demonstrate the generator of electricity failed to use reasonable care.

Any regulations claiming electricity is a product simply because it is electricity must be amended.

Action requested:

The word "products" shall be removed from all regulations implementing PUC 399.13 (b).

If the word "products" is not removed, reference the Energy Commission's authority to define electricity as a product not consistent with Fong v. Pacific Gas & Electric Company (1988) and Pierce v. Pacific Gas & Electric Company (1985).

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