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Docket Office, MS-4

Docket No. 11-RPS-01

1516 Ninth Street

Sacramento, CA 95814

(submitted via email to: docket@energy.state.ca.us and RPS33@energy.state.ca.us)

Re: Docket No. 11-RPS-01; Renewables Portfolio Standard

Docket Office:

Please find the enclosed comments from the Union of Concerned Scientists regarding 33% RPS Publicly Owned Electric Utility Regulations Concept Paper.

If you have any trouble viewing this material, please contact me using the information listed below.

Sincerely,

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COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE 33% RPS PUBLICLY OWNED ELECTRIC UTILITY REGULATIONS CONCEPT PAPER

The Union of Concerned Scientists (“UCS”) thanks the California Energy Commission (“CEC”) for providing the opportunity to submit initial comments on its “33 Percent Renewables Portfolio Standard Publicly Owned Electric Utility Regulations Concept Paper” (“concept paper”). Several issues addressed in the concept paper are being simultaneously considered at the California Public Utilities Commission and parties including UCS have submitted detailed technical comments that CEC staff should find informative, especially on issues related to the product content categories, which UCS strongly believes must be defined the same for all regulated entities.

Foundational Issues

The phrases “consistent with” and “in the same manner as” are used in several sections of the Public Utilities Code to establish publicly-owned utility (“POU”) RPS compliance requirements regarding procurement content limits, banking excess procurement, flexible compliance, and cost limitations. Instead of providing details on how these policies should be implemented, sections 399.30(c)(3) and 399.30(d)(1-3) reference previous sections of the code that contain more detailed language on how these policies should be implemented for retail sellers. UCS believes that a plain interpretation of “consistent with” and “in the same manner as” requires the CEC and the POUs to interpret RPS requirements referenced in sections 399.30(c)(3) and 399.30(d)(1-3) in the exact same way as how they would be interpreted for retail sellers unless the POUs can provide clear and compelling evidence that different rules would result in superior policy outcomes.

Classification of Procurement Products

UCS believes it is essential that the CEC and the CPUC adopt identical definitions for RPS eligible products and portfolio content categories for retail sellers and POUs. Differing portfolio content categories may increase confusion and uncertainty in the renewable energy market, limit the number of RPS-eligible products that a load-serving entity (“LSE”) has access to, and raise costs of the program. Moreover, § 399.30(c)(3) requires portfolio content categories and limitations to be the “consistent” for retail sellers and POUs, which UCS interprets to mean “the same.”

UCS submitted comments to the CPUC on August 8 and 19 in R.11-05-005 and comments on this concept paper reflect those positions. Several other parties that have considerable experience in the renewable energy market also submitted CPUC comments and may not have participated in the CEC’s September 1 webinar or plan to submit comments on the CEC’s RPS concept paper. Nevertheless, CEC staff may want to seek out some of these parties to gather more information about how various RPS-eligible products can be delivered into California and verified.



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Citizens and Scientists for Environmental Solutions

Portfolio Content Category 1: These RPS-eligible products are described in § 399.16(b)(1) of the Public Utilities Code and include any RPS-eligible electricity that can be verified as delivered to a California balancing authority without substituting electricity from another source (except for real-time ancillary services which do not receive RPS credit unless they come from RPS-eligible facilities).

UCS believes that nothing in § 399.16(b)(1) prevents the combined electricity and RECs that meet the criteria for portfolio content category 1 from being unbundled and sold separately. However, any time a REC is unbundled from its underlying electricity and sold separately, all renewable and environmental attributes remain with the REC. This means that any owner of an electricity generation system that sells its RECs and electricity separately is no longer able to claim renewable or environmental attributes for its electricity.

Section 399.16(e) provides some flexibility on portfolio content category limitations, and since the POU content limitations should be applied in a manner that is “consistent” with § 399.16, this flexibility should be offered to POUs that meet the conditions specified in § 399.16(e). Section 399.16(e) is clear that under no circumstances can the percentage requirement for deliveries from procurement content category 1 be reduced “below 65 percent for any compliance obligation after December 31, 2016.”

Portfolio Content Category 2: Section 399.16(b)(2) explicitly creates a separate category for “firmed and shaped” electricity products because such transactions provide benefits to California ratepayers that go beyond REC-only transactions, or any other type of RPS transaction that would fall into the category described in § 399.16(b)(3). When structured effectively, “firmed and shaped” transactions provide the following benefits that REC-only purchases do not: (1) additional electricity imports that reduce the need to generate fossil-based electricity inside California, which result in air quality benefits; (2) transactions that support the development of new renewable energy resources; and (3) stable, long-term compliance options that protect California ratepayers from price volatility. In California, REC-only transactions have not driven the development of new renewable energy resources and are likely short-term compliance options that leave LSEs with the need to procure additional RPS products and electricity for future RPS compliance and load requirements.

It would not be appropriate for the CEC to simply continue using the definition of “firmed and shaped” electricity products that currently exists in the RPS Guidebook, which allow transactions that are functionally equivalent to REC-only purchases appear “firmed and shaped.” In fact, the Legislature took deliberate action in SB 2 (1x) to distinguish “firmed and shaped” transactions from REC-only transactions because RECs offer a less valuable RPS compliance product. Simply put, “firmed and shaped” transactions that provide a long-term revenue stream to the RPS-eligible renewable electricity generator promote the development of new renewable energy facilities and REC-only transactions do not.



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Citizens and Scientists for Environmental Solutions

Therefore, adopting the current definition of “firmed and shaped” which allow LSEs to attach unbundled RECs to pre-scheduled electricity imports, would directly go against the intent of the Legislature.

To encourage the development of new renewable energy generation facilities (and therefore establish long-term compliance strategies for California utilities and their ratepayers) UCS believes that the “firmed and shaped” contracts should include a plan for selling the electricity generated by the RPS facility into the local market. This way, the RPS-eligible generator is not left with the additional risk of finding a buyer for variable, null power once it has been stripped of its REC. If a “firmed and shaped” contract is simply a REC-only purchase from an RPS-eligible facility combined with a completely unrelated power import, the renewable energy developer who is supposed to be supplying the REC must still find a buyer for its energy, which significantly increases risk and transaction costs. This type of contract only provides a long-term REC revenue stream for the developer and is much less likely to result in the construction of new renewable energy facilities. Iberdrola Renewables and Horizon Wind Energy, two renewable developers with experience building renewable generation facilities outside the state, echo this belief in their comments on a CPUC proposed decision on tradable RECs: “However, no renewable generation investment with which the Companies are familiar would stand on their own purely on REC values. The sale of energy is critical to project viability and ultimate development.”¹

UCS also believes that “firmed and shaped” contracts should deliver electricity that is additional to any power imports that would have entered California irrespective of the RPS program. Unless California energy users are receiving an electricity import that is incremental to imports they would have otherwise received, the net result of the transaction is a REC, and therefore should be categorized as a transaction described in Public Utilities Code section 399.16(b)(3). For instance, UCS does not believe that bundling a REC with a pre-scheduled energy import from a facility that has a long-term contract with a utility should be considered “incremental.”

In their CPUC comments on these issues, PG&E and SCE propose to define “incremental electricity” as any electricity that is imported pursuant to a contract signed on or after June 1, 2010.² UCS fails to see any way in which this proposal is meaningful for future RPS transactions. PG&E and SCE’s proposal would allow virtually *any* electricity import, except for those associated with contracts that existed as of June 1, 2010, to meet the requirements of § 399.16(b)(2). For example, electricity deliveries stemming from a contract that was executed in 2011 would still be considered “incremental” when bundled to RECs in 2015. Moreover, electricity from facilities

¹ Comments of Iberdrola Renewables, Inc. and Horizon Wind Energy on the Proposed Decision of ALJ Simon Authorizing use of Renewable Energy Credits for RPS Compliance, April 15, 2009, p.3, available at: <http://docs.cpuc.ca.gov/efile/CM/99861.pdf>

² SCE at 18; PG&E at 21.



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

were already delivering electricity to California on June 1, 2010 could be tagged to RECs and called incremental as long as the deliveries occurred through a contract that was renegotiated after June 1, 2010. This interpretation of “incremental” should be rejected.

UCS proposes that “incremental electricity” be considered any electricity imports that are not otherwise part of an LSE’s portfolio at the time the “firmed and shaped” contract is executed. For example, scheduled electricity deliveries from long-term contracts between LSEs and generation facilities should not be considered incremental electricity. To provide a structure that creates a meaningful distinction between § 399.16(b)(3) products and products that fall into § 399.16(b)(2) because they support the development of new renewable energy generation, contain electricity which reduces the need to generate electricity elsewhere and provide stable, longer term compliance options that protects California ratepayers from price volatility, UCS proposes that “firmed and shaped” RPS-eligible transactions meet the following criteria:

- (i) Are procured by means of an agreement or set of agreements, including an ownership agreement or purchase agreement between a renewable generator and a LSE, for the combined purchase of renewable energy credits and electricity that is not otherwise in the portfolio of the LSE, scheduled into a California balancing authority.
- (ii) Are subject to an ownership agreement, or purchase agreement between a renewable energy generator and a LSE, which is not less than 5 years in duration.
- (iii) Each contract contains a fixed price for the combined purchase of renewable energy credits and the electricity import.

Combining *together* a contract to purchase RECs with a contract to purchase substitute energy will bring all parties involved in the “firmed and shaped” transaction to the table and encourage LSEs to ensure the intermittent, null power is “firmed and shaped” into the local market. This type of transaction is a much more valuable to the renewable generator because it can help finance the construction of a new facility. In contrast, a REC-only contract still requires the renewable developer to find a buyer for its null, intermittent power. Requiring a minimum five-year contract between the LSE and the renewable electricity generator will also promote the development of new renewable energy resources. Longer-term contracts will allow LSEs to rely on the generation of these facilities for the long-run, as opposed to paying for short-term contracts with renewable facilities that will likely sell their energy and RECs inside their state once their local RPS requirements ramp up, and leave LSEs more desperate for higher priced, short term products to satisfy RPS requirements. Finally, price stability is an additional value that RPS transactions containing electricity and RECs provide. A contract that contains a stable price for both the RECs and the substitute energy over the life of the substitute energy contract achieves price stability for the ratepayer.



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

Portfolio Content Category 3: Section 399.16(b)(3) clearly defines any RPS-eligible generation that does not meet the product content category criteria for § 399.16(b)(1) or (2) should fall into portfolio content category 3.

Compliance and Verification

Verification process: UCS supports the CEC's recommendation to create separate verification reports for POUs and retail sellers. UCS also agrees that verification reports are only necessary at the end of a compliance period, but that annual procurement data should be posted on the CEC website track POU progress towards RPS compliance obligations.

Non-compliance triggers: Failure to comply with RPS requirements can happen in two ways. An LSE can fail to deliver the amount of RPS-eligible electricity that has been established as a requirement for each compliance period or an LSE can fail to deliver its RPS-eligible electricity within the product content category limitations established in § 399.16. These are dual requirements for the RPS program and should apply equally to both POUs and retail sellers.

UCS commends the CEC for emphasizing the importance of filing timely and sufficient documentation to verify compliance. Submitting complete and timely reports is critical to the success of the RPS program. The quality of the 2010 RPS reporting spreadsheets submitted by POUs differ widely. Some reports leave out information needed to identify individual deliveries, and some leave out critical information about individual deliveries including vintage, location and ID numbers of the power facilities, and length and dates of the contracts. Timely reporting should be enforced by the CEC and any issues that threaten to prevent a utility from submitting comprehensive and clear data should be identified and resolved as quickly as possible.

Criteria and process for determining whether POUs have met procurement requirements:

Sections 399.30(b) and (c) of the Public Utilities Code contain the RPS procurement requirements for POUs. Under no circumstances should the CEC or the POUs interpret RPS compliance obligations to be simply "unmet need" as proposed in section (c)(i)(1)(ii) of the CEC's concept paper. Section 399.30(a) contains the phrase "unmet need" but clearly does not establish an RPS requirement that is *only* based on unmet needs:

- (a) In order to fulfill unmet long-term generation resource needs, each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatthours sold to the utility's retail end-use customers, each compliance period, *to achieve the targets of subdivision (c). (emphasis added)*



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

Subdivision (c) of § 399.30 requires that each POU shall ensure:

- (1) The quantities of eligible renewable energy resources to be procured for the compliance period from January 1, 2011, to December 31, 2013, inclusive, are equal to an average of 20 percent of retail sales.
- (2) The 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 achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020. The local governing board shall require the local publicly owned utilities to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years.

There should be no question that the RPS procurement requirements are established in § 399.30(b) & (c).

2011-2013 compliance period: Section 399.30(c)(1) requires that the cumulative quantity of RPS-eligible resources procured in the 2011-2013 compliance period equal an average of 20% of retail sales for each of those three years. UCS suggests the most straightforward way to calculate the actual cumulative compliance requirement for this three-year period is to calculate the sum of 20% retail sales for each year between 2011 and 2013.

2014-2016 & 2017-2020 compliance periods: Section 399.30(b)(2) clearly establishes the second compliance period as containing the years 2014, 2015, and 2016. The word “inclusive” after “December 31, 2016” explains that the total compliance period encompasses every day between Jan. 1, 2014 and December 31, 2016. Similarly, § 399.30(b)(3) clearly establishes the third compliance period as containing the years 2017, 2018, 2019, and 2020. The word “inclusive” after “December 31, 2020” explains that the total compliance period encompasses every day between Jan. 1, 2017 and December 31, 2020.

Verifying portfolio content category limitations: UCS agrees with the CEC that contracting information should be used to estimate the amount of RPS-eligible electricity that will fall into each of the three portfolio content categories, but disagrees with the CEC that “NERC e-Tags adequately demonstrate the timing and quantity of generation scheduled into a California balancing authority” at the level that is required in § 399.16(b)(1)(A).

Generally speaking, UCS does not believe it’s possible to formalize how RPS-eligible deliveries from each portfolio content category should be verified before formal definitions of the categories themselves have been adopted. UCS believes that the CEC has the ultimate



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Citizens and Scientists for Environmental Solutions

authority to verify all RPS-eligible products, but defining the different products should be a joint effort between the CEC and the CPUC.

The question of how to verify resources that qualify for portfolio content category 1 has been debated in CPUC comments, and several parties including UCS believe that the plain language of § 399.16(b)(1)(A) requires that any RPS-eligible generation that qualifies for portfolio content category 1 must prove it has maintained “an hourly or subhourly import schedule into a California balancing authority...”. An e-Tag can prove that electricity has been transmitted on an hourly basis, and a WREGIS certificate can prove that electricity was generated from an RPS-eligible facility on a monthly basis, the combination of an e-Tag and a WREGIS certificate cannot prove that electricity coming into California on an hourly basis is actually coming directly from the RPS-eligible generation facility. Hourly metered data from the busbar would be needed to verify this level of detail.

Furthermore, UCS believes it’s important that the hourly metered data and e-tags be provided to the CEC for verification. In its comments to the CPUC on August 8, 2011 in R.11-05-005, Southern California Edison (“SCE”) proposes to NOT submit “e-tag, schedule, metering, and other supporting data that provides evidence of the product categorization at the time of the showing.”³ UCS sees no reason to withhold necessary verification data, even if the verification process cannot be automated at this time.

UCS withholds comments on how resources from portfolio content categories 2 and 3 should be verified until the CEC and CPUC establish joint definitions for the products themselves. UCS suggests that the CEC refer back to its comments on how to define product from category 2, which could easily be verified by contract provisions.

Reasonable progress in intervening years of each compliance period: Section 399.30(c)(2) requires that the 2014-2016 and 2017-2020 compliance periods reflect “reasonable progress in each of the intervening years...” Therefore UCS believes the POUs should make an assumption about “reasonable progress” benchmarks in order to calculate the cumulative compliance obligation for each of these compliance periods. The plain meaning of “reasonable progress” prevents a POU from assuming RPS-eligible deliveries will stay constant in intervening years, or dip below the percentage of retail sales achieved in the last compliance period. For example, if a POU needed to reach 25% renewables in 2016, the POU should retain a level of at least 25% throughout the next compliance period. The CPUC has proposed that “reasonable progress” be calculated by assuming a positive linear trend throughout the compliance period and UCS believes this is a reasonable assumption for POUs to make.

³ SCE at 4.



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Citizens and Scientists for Environmental Solutions

Deficits associated with a previous renewables portfolio standard: the CEC suggests several options for interpreting § 399.15(a) but UCS believes this section applies exclusively to retail sellers: “for any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article.” There is no reference to § 399.16(a) in § 399.30, which establishes RPS compliance requirements and rules for the POU. In addition, the POU did not have an enforceable mandate for the 20% RPS program and therefore any “deficit” associated with failing to reach 20% renewables by 2010 only exists when actual procurement is compared to a POU’s internal goals and not enforceable, or subject to penalties.

Excess procurement from previous compliance periods: Section 399.30(d)(1) allows POU to bank excess procurement from one compliance period to another in the same manner as allowed for in § 399.13. Section 399.13(a)(4)(B) is clear that banking excess procurement may begin on Jan. 1, 2011 and is only allowable for excess procurement stemming from contracts of 10 or more years. UCS sees no compelling reason why the same banking limits, including the provision that only long-term contracts may be banked, should not apply to the POU. The 10-year contract banking limitation was explicitly put into the statute to encourage early action on signing renewable energy contracts that promote the development of new renewable energy facilities. Neither short-term nor REC-only contracts promote the development of new renewable energy resources. For this reason, POU should not be able to load up on these types of contracts and carry excess procurement from one compliance period to another.

Conditions allowing waiver of enforcement: Section 399.30(a) requires each POU to “adopt and implement a renewable energy procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources...to achieve the targets of subdivision (c).” Since the CEC is authorized to determine whether a POU has failed to comply with its RPS compliance obligations, UCS suggests that the CEC rely upon annual procurement plans as a data point in their analysis of whether a POU has made reasonable and sufficient efforts to successfully achieve its RPS obligations.

Procurement plans should lay out the utility’s path to meeting the next compliance obligation and provide evidence that the utility is making “reasonable progress” towards RPS obligations in the years between compliance obligations. Since it’s highly possible that not all signed contracts will result in built projects, or deliver power exactly when initially planned, procurement plans should contain assessments of potential compliance delays and status updates for development schedules on signed contracts. Procurement plans should also contain strategies to compensate for potential project delays, such as plans to procure more than the minimum amount of delivered energy needed to meet a compliance obligation. UCS believes that procurement plans should be made publically available through each POU’s website or on a CEC webpage that consolidates all POU plans.



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Citizens and Scientists for Environmental Solutions

Adequate reporting should be another data point the CEC uses to determine whether a POU has made a reasonable and sufficient effort to achieve its RPS obligations. While ensuring “reasonable progress” is the duty of the governing boards, not the CEC, publically tracking POU progress towards RPS compliance requirements is under the CEC’s purview: “a local publically owned electric utility shall annually submit to the Energy Commission documentation regarding eligible renewable energy resources procurement contracts that it executed during the prior year...”⁴ UCS urges the CEC to make these annual reports publically available, similar to the RPS database the CPUC maintains on their website.⁵ UCS also suggests that each signed contract that has not yet begun delivering energy be preliminarily categorized into one of the three portfolio content categories established in § 399.16. Additionally, UCS believes that these reports should contain information on renewable energy deliveries that occurred during the reporting year, and into which product content category these deliveries fall, the source of the electricity, and the contract length.

Conclusion

UCS thanks the CEC for the opportunity to submit these initial comments and looks forward to additional participation in this proceeding.

Sincerely,

Laura Wisland
Senior Energy Analyst

⁴ Pub. Util. Code §399.30(g).

⁵ See <http://www.cpuc.ca.gov/PUC/energy/Renewables/>