

March 30, 2012

California Energy Commission
Docket Office, MS-4
Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

**Re: Questions to Stakeholders Concerning the 33 Percent
Renewables Portfolio Standard Draft Regulations
(Docket No. 11-RPS-01)**

Southern California Edison Company ("SCE") respectfully offers these comments on the California Energy Commission ("Energy Commission") Staff's Questions to Stakeholders Concerning the 33 Percent Renewables Portfolio Standard ("RPS") Draft Regulations as provided in the workshop notice of the Staff Workshop on 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations for Publicly Owned Electric Utilities.

SCE recognizes that under Senate Bill ("SB") 2 (1x), publicly owned electric utilities ("POUs") have discretion as to how they implement certain elements of the new 33% RPS program. Nonetheless, there are key elements of the new RPS program that need to be consistent for all electricity providers for the sake of market stability and consistent evaluation of the State's overall progress toward its renewable energy goals. SCE commends the Energy Commission Staff for striving to align key elements of the RPS program such as portfolio content categories so that they are the same for POUs and other retail sellers. SCE encourages the Energy Commission to continue collaborating with the California Public Utilities Commission ("CPUC") to shape the RPS into a program with consistent rules across all load-serving entities.

SCE provides comments below in response to Energy Commission Staff's questions on consistency and timing/seams issues.

A. Consistency

- 1. Should the Energy Commission determine reasonableness for cost limitations and delay of timely compliance based on the structure to be determined for retail sellers? Should rules for excess procurement for POU's also be consistent with excess procurement rules for retail sellers? If not, explain how the rules should differ.**

As SCE stated in its prior comments, the phrases “consistent with” and “in the same manner as” are used in SB 2 (1x) to link how the new RPS rules for POU's and retail sellers are to relate to one another.¹ These provisions of SB 2 (1x) reflect the Legislature's intent to bring all load-serving entities under one RPS program with consistent rules. Additionally, just as important as bringing all electricity providers under one RPS program is the Legislature's intent to ensure that all electricity customers in California share equally in the responsibility of meeting the State's aggressive RPS goals. Accordingly, consistent with SB 2 (1x), the new 33% RPS program should be applied to all entities using the same rules to the extent possible.

In particular, the portfolio content categories, targets (including banking of excess procurement), and compliance verification (including incorporation of off-ramps) should apply the same for POU's and retail sellers. Equivalent treatment for all load-serving entities with respect to these elements will promote and maintain the integrity of the RPS program and avoid confusion in the market. It will also ensure that all customers in California are treated equally with regard to assuming responsibility for the State's ambitious RPS goals. Items such as cost containment should also be set for POU's in the spirit of providing similar rules as those for retail sellers.

B. Timing/Seams Issues

- 1. Is there any reason why REC's generated before January 1, 2011, could be used for the first compliance period? Should this depend on whether the utility met its procurement target in 2010, or in years before? How would the Energy Commission verify that a POU has met these targets? How would the Energy Commission verify that a REC generated prior to January 1, 2011, has not been claimed for RPS compliance in a previous year?**

SB 2 (1x) establishes a forward looking RPS program based on actual deliveries. There is no basis under SB 2 (1x) for allowing REC's generated before January 1, 2011 to count toward the first compliance period. The clear intent of SB 2 (1x) is for the new 33% RPS program to have an effective date of January 1, 2011. Accordingly, the first

¹ See Cal. Pub. Util. Code §§ 399.30(c)(3), 399.30(d)(1)-(3).

compliance period under the new program began on January 1, 2011.² Moreover, new Public Utilities Code Section 399.13(a)(4)(B) provides that the CPUC shall adopt “[r]ules permitting retail sellers to accumulate, *beginning January 1, 2011*, excess procurement in one compliance period to be applied to any subsequent compliance period,”³ while new Section 399.30(d)(2) states that the governing board of a local publicly owned electric utility may adopt “[r]ules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers pursuant to Section 399.13.” The law is therefore clear that accumulation of excess procurement to bank across periods under the new RPS program cannot begin until January 1, 2011. Therefore, renewable energy credits (“RECs”) generated prior to January 1, 2011 cannot count toward the new RPS program.

2. Considering a 36 month timeframe for retiring RECs, can RECs generated under a contract approved prior to June 1, 2010, in accordance with PUC section 399.16 (d), be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?

As discussed above, RECs generated prior to January 1, 2011 cannot count toward the first compliance period. However, RECs associated with a contract executed prior to June 1, 2010, and generated on or after January 1, 2011, may count toward the first compliance period. For retail sellers, Public Utilities Code Section 399.16(d) specifically states that “[a]ny contract or ownership originally executed prior to June 1, 2010, *shall count in full* towards the procurement requirements established pursuant to” the RPS, provided the conditions set forth under Section 399.16(d) are met.⁴ Since Public Utilities Code Section 399.30(c)(3) provides that a “local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16,” this same rule should apply for POUs.

The portfolio content categories and the related limits on each category should not be applied to contracts executed prior to June 1, 2010. As noted above, such contracts executed prior to June 1, 2010 “shall count in full” toward the RPS pursuant to Public Utilities Code Section 399.16(d). Furthermore, the portfolio content category rules under Public Utilities Code Section 399.16(c) make clear that they only apply to “contracts executed after June 1, 2010.” As such, generation from contracts or utility-owned generation signed or in operation before June 1, 2010 should not be subject to categorization, and should not be subject to the restrictions imposed for resources in any particular portfolio content category. This means that contracts executed prior to June 1, 2010 should count in full and be fully bankable for RPS compliance purposes,

² See Cal. Pub. Util. Code §§ 399.15(b)(1)(A), 399.30(b)(1).

³ Emphasis added.

⁴ Emphasis added.

regardless of which category they would have fallen into if they had been executed on or after June 1, 2010.

Applying the language in this fashion protects the benefits of the bargain in effect when these contracts were executed. When parties executed these contracts, they did so based on the known regulatory framework at the time. It would be unfair for the Energy Commission to alter the value of an executed transaction after the fact.

3. Can RECs produced from contracts that were approved after June 1, 2010 be used for the first compliance period? Should the portfolio content categories be applied to those RECs, and should the RECs in different portfolio content categories be treated the same?

RECs from contracts that were approved after June 1, 2010 are eligible to count toward the first and subsequent compliance periods. If the contract was executed after June 1, 2010, the RECs will fall under one of the new portfolio content categories under Public Utilities Code Section 399.16 and be subject to all rules for that portfolio content category.

4. Must electricity products be retired in the same compliance period as when they are procured to be used for compliance?

The notion that electricity products or RECs must be retired in the same compliance period as when they are procured to be used for compliance is not supported by SB 2 (1x). Public Utilities Code Section 399.21(a)(6) expressly states that a “renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility *within 36 months from the initial date of generation of the associated electricity.*”⁵ Thus, retail sellers and POUs have 36 months from the initial date of the generation of the electricity to retire the RECs in the Western Renewable Energy Generation Information System (“WREGIS”) and count them toward their procurement quantity requirements. Depending on when the RECs are generated, this 36-month period allows RECs generated and/or procured in one compliance period to be retired in the next compliance period.

Any limitations on banking excess procurement in one period to the next period under Public Utilities Code Section 399.13(a)(4)(B) do not limit retail sellers’ or POUs’ ability to retire RECs created in one period during the next period. The ability to bank procurement that has already been retired in WREGIS is a different issue than when a retail seller or POU must retire the WREGIS Certificates in the first place. Indeed, the Legislature specifically rejected the notion that a REC must be retired in the period in

⁵ Emphasis added.

which it was generated. An earlier version of Public Utilities Code Section 399.21(a)(6) in SB 722, the predecessor to SB 2 (1x), stated that “[n]o renewable energy credit shall be eligible for compliance with the renewables portfolio standard procurement requirement *unless associated with electricity generated during the same compliance period in which the credit is claimed by the retail seller or local publicly owned electric utility.*”⁶ The Legislature deleted the italicized language in the August 31, 2010 version of SB 722 and replaced it with the same 36-month period to retire a REC included in the current Section 399.21(a)(6).⁷ The exact same 36-month language is what the Legislature approved in SB 2 (1x).⁸ Therefore, SCE urges the Energy Commission to follow the Legislature’s clear intent and allow RECs to be retired at any time within 36 months after generation, regardless of whether the RECs are retired within the same compliance period when they were generated and/or procured.

SCE appreciates this opportunity to comment. As discussed above, SCE urges the Energy Commission to continue working with the CPUC to develop RPS rules that are as consistent as possible among all load-serving entities.

Very truly yours,

/s/ Manuel Alvarez

Manuel Alvarez

⁶ SB 722 (August 20, 2010 version) (available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100820_amended_asm_v91.html) (emphasis added).

⁷ SB 722 (August 31, 2010 version) (available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100831_amended_asm_v90.html).

⁸ Both the August 31, 2010 version of SB 722 and SB 2 (1x) provide that a REC shall not be eligible for the RPS “unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity.”