Union of Concerned Scientists
Citizens and Scientists for Environmental Solutions

May 6, 2013

California Energy Commission
Docket Office, MS-4
Docket No. 13-RPS-01
1516 Ninth Street
Sacramento, CA 95814
(submitted via email to: docket@energy.state.ca.us)

Re: Docket No. 13-RPS-01; Renewables Portfolio Standard

Docket Office:

Please find the enclosed comments from the Union of Concerned Scientists regarding the 15-day language changes for the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.

Sincerely,

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COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON 15-DAY LANGUAGE CHANGES FOR THE ENFORCEMENT PROCEDURES FOR THE RENEWABLES PORTFOLIO STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

The Union of Concerned Scientists ("UCS") submits these comments in response to the 15-day language changes ("15-day changes") to the Enforcement Procedures for the Renewables Portfolio Standard ("RPS") for Local Publicly Owned Electric Utilities ("POU") Proposed Regulations, which were released by the California Energy Commission ("Commission") on April 19, 2013.

Section 3202 – Qualifying Electricity Products

UCS continues to be concerned that the manner in which the Commission defines the "36-month shelf-life" of a renewable energy credit ("REC") is inconsistent with the way the California Public Utilities Commission ("CPUC") defined this same timeframe in Decision 12-06-038, which was adopted on June 21, 2012. An inconsistent treatment of this timeframe will create confusion in the marketplace and create the possibility that RECs will be treated and valued differently depending on whether they are purchased by POUs or retail sellers.

In Decision 12-06-038, the CPUC specifies that "any renewable energy credit retired for compliance on or after January 1, 2011 by a retail seller as defined in Public Utilities Code Section 399.12(j) must be retired within 36 months *of the initial date of the associated generation*."[1] The CPUC makes clear that the 36-month counting period for a REC begins on the actual date of initial generation and includes the month in which the REC was generated. In contrast, section 3202(c) of the Commission's draft regulations state:

> "A POU may not use a REC associated with electricity products to meet its RPS procurement requirements unless it is retired *within 36 months from the initial month of the generation* of the associated electricity. For example, a POU can retire a REC associated with electricity generated *in February 2011 no later than February 28, 2014*, to claim the REC toward the POU's RPS procurement requirements."[2]

If one assumes the 36-month counting period begins on the date of initial generation so that it includes the generation month, the POU in this example would need to retire the REC no later than January 31, 2014, not February 28, 2014.

UCS brought up this discrepancy in comments submitted with the Large-scale Solar Association ("LSA") on April 16, 2013. Since submitting those comments, Commission staff has confirmed with UCS that the CEC and the CPUC are indeed interpreting this 36-month timeframe

[1] D.12-06-038, Ordering Paragraph 23; *also see* discussion pp.48-51. *(emphasis added)*
[2] *Id. (emphasis added)*

differently. Knowingly adopting RPS rules that define RECs so that they could be valued differently, depending on which type of utility purchases them, will create unnecessary market confusion and runs directly against the Commission's stated intent to "ensure the proposed regulations were consistent with the RPS rules and policies established by the CPUC for retail sellers of electricity…"[3] UCS respectfully requests that the Commission define the 36-month REC counting period so that it includes the initial month of generation, to ensure the value of REC remains fungible across the RPS marketplace.

Section 3204 – RPS Procurement Requirements

Section 3204 of the draft regulations establishes POU procurement requirements for each of the three compliance periods. Under the draft regulations, each POU would be required to procure renewable energy equal to an average of 20 percent of retail sales through the first compliance period (2011-2013). For the 2014-2016 compliance period, the draft regulations would require the POUs to maintain a procurement level equivalent to 20 percent of retail sales through 2015 and increase to 25 percent by 2016. This is inconsistent with the rules adopted by the CPUC for the retail sellers, which define the 2014-2016 compliance requirement as equivalent to 21.7 percent in 2014, 23.3 percent in 2015, and 25 percent in 2016.

The Commission has proposed 15-day changes to the draft regulations that would make the POUs' procurement requirements for the third compliance period (2017-2020) equivalent to those established for retail sellers: 27 percent of 2017 retail sales, 29 percent of 2018 retail sales, 31 percent of 2019 retail sales, and 33 percent of 2020 retail sales.

Given that UCS has made a case throughout this rulemaking that the statue requires POUs to make "reasonable progress" throughout each compliance period, UCS commends the Commission for modifying the procurement requirement for the 2017-2020 compliance period in the 15-day changes. Public Utilities Code section 399.15(b)(2)(B), which guides the procurement requirement for retail sellers and section 399.30(c)(2), which guides the procurement requirement for POUs, both use an identical phrase which specifies that these quantities shall "reflect reasonable progress in *each of the intervening years*…" (*emphasis added*). UCS believes that this 15-day change is required because it is the Commission's responsibility "to ensure the proposed regulations were consistent with the RPS rules and policies established by the CPUC for retail sellers of electricity…"[4]

Yet, the draft regulations continue to ignore any "reasonable progress" requirement for the second compliance period. UCS believes the Commission also is required to adopt a procurement trajectory for the 2014-2016 compliance period that is consistent with requirement adopted for retail sellers. Given the Commission's acknowledgement that "reasonable progress" requires the assumption of a linear procurement trend throughout the third compliance period, there is no reasonable basis for ignoring this requirement during the

[3] Draft regulations at Preface.
[4] Draft regulations at Preface.

second period. UCS respectfully urges the Commission to therefore adopt a procurement trend for the second compliance period that would result in procurement equivalent to 21.7 percent in 2014, 23.3 percent in 2015, and 25 percent in 2016.

Section 3206 – Optional Compliance Measures

The 15-day changes propose a significant deviation from the rules governing how the POUs calculate and apply excess procurement in one compliance period to a subsequent compliance period.

Section 399.30(d) lays out three major categories of flexible compliance with the RPS program. Each of these flexible compliance provisions are one sentence long and reference other sections of the statute which describe the provisions in more detail. Section 399.30(d)(1) allows for the banking of certain types of excess procurement: "Rules permitting the utilities 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." (*emphasis added*)

Section 399.13(a)(4)(B), which describe the banking rules "as allowed for retail sellers" says:

> Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers*. In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration.* In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement. (*emphasis added*)

Despite the plain meaning of the statute, which requires banking rules for POUS to be applied in the same manner as those for retail sellers, the 15-day changes eliminate the restriction on POUs banking contracts of less than 10 years in duration. This change, which is plainly contrary to the law, is not supported by the *Commission's Initial Statement of Reasons*, which says:

> Public Utilities Code section 399.13(a)(4)(B) establishes limitations on excess procurement for retail sellers, including a prohibition on counting PCC 3 procurement as excess procurement and a prohibition on counting procurement under contracts of less than 10 years of duration as excess procurement. *The limitations of Public Utilities Code section 399.13 (a)(4)(B) should apply equally to POUs to ensure the rules for excess procurement for retail sellers are applied in the same manner to POUs*.[5]

[5] Initial Statement of Reasons: Proposed Regulations Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities, page 30. (*emphasis added*)

Unlike other proposed changes to the regulations which have been discussed in public workshops and flagged as topics appropriate to address in written comments, the wisdom and justification for these changes appear to have only been addressed by the California Municipal Utilities Association ("CMUA") in their comments submitted on April 16, 2013.[6] UCS submits that this late-breaking and unvetted change by the Commission is inappropriate and violates state law for several reasons.

Despite the statutory interpretation in the *Initial Statement of Reasons*, perhaps the Commission now believes it has the authority to define banking rules differently for the POUs because the statute does not literally repeat the banking rules that are laid out in detail in Section 399.13(a)(4)(B)? As the Commission well knows, the RPS rules for the POUs are summarized in Section 399.30. Instead of repeating word-for-word the requirements of program features such as portfolio content categories or conditions that allow for procurement delays, Section 399.30 references other sections of the statute that lay out these requirements in sufficient detail.[7]

The Commission has not, nor should it, interpret a cross reference to other sections of statute as an invitation to create a completely different rule. This is reinforced by the very clear guidance in the statute that the banking rules should be developed "in the same manner as" the banking rules laid out in Section 399.13.[8]

In its April 16, 2013 comments, CMUA argues that the Commission does not have the authority to enforce the same banking rules on the POUs because "unlike the CPUC, the CEC does not play a role in approving POU RPS contracts."[9] In addition, CMUA argues that because the CPUC requires the IOUs to procure minimum quantities of long-term contracts, the banking restrictions on short-term contracts should not be applied equally to all utilities.[10] Essentially, CMUA is attempting to make the case that because the IOUs have a different regulatory construct governing their procurement activities, the statutory rules regarding banking should also be different.

CMUA's argument is not a relevant or appropriate reason to justify the Commission's 15-day changes to the banking rules. There is no relationship between the CPUC's authority to approve renewable energy contracts for the investor-owned utilities ("IOUs"), and the several aspects of the RPS statute that treat various types of RPS procurement differently in the statute. One example is the application of the portfolio content category limitations. The RPS statute establishes three categories of eligible RPS procurement, and places minimum and maximum requirements on the amount of procurement from each category a utility can use to satisfy a given compliance requirement. The Commission does not the authority to approve or reject the POUs' individual RPS contracts, but the POUs are still required to abide by the

[6] *See* CMUA comments, pp.14-16.
[7] *See* Public Utilities Code Section 399.30(b)(3) and section 399.30(d)(2).
[8] Public Utilities Code Section 399.30(d)(1).
[9] Comments of the California Municipal Utilities Association, April 16, 2013, page 15.
[10] *Ibid*.

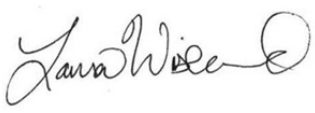
limitations established by the portfolio content category limitations. The banking limitations are no different than enforcing the portfolio content category limitations.

Banking rules, established in sections 399.13(a)(4)(B) and 399.30(d)(1) do not directly approve or reject RPS contracts. Rather, the banking provisions provide an aspect of flexibility to the program that rewards utilities for over-procuring certain types of renewable energy contracts. The statutory restrictions on banking were developed very deliberately to encourage utilities to focus their procurement activities on long-term contracts because they most directly promote the development of new renewable energy projects. Utilities should be encouraged to focus procurement activities on long-term contracting, and the banking rules provide a positive incentive to over-procure these types of resources.

Furthermore, the CPUC's approval authority over individual contracts only extends to IOUs, not other retail sellers, including Electric Service Providers ("ESPs") and Community Choice Aggregators ("CCAs"). Despite not reviewing and approving these contracts, the CPUC still applies the banking rules to how the ESPs and CCAs manage their RPS portfolios.

UCS urges the Commission to recognize that there is no valid justification to treat the POUs differently when it comes to banking rules. UCS respectfully requests that the Commission remove the 15-day changes to this section and preserve the restrictions on the banking of short-term contracts.

Sincerely,



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