BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 15-02-020 (Filed February 26, 2015)

COMMENTS OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON THE ALJ'S RULING OF APRIL 15, 2016 (IMPLEMENTATION OF CERTAIN SB 350 AMENDMENTS TO RPS PROGRAM)

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments in response to the Administrative Law Judge's (ALJ) Ruling Requesting Comment on Implementation of Elements of Senate Bill 350 Relating to Procurement Under the California Renewables Portfolio Standard, which was issued in this proceeding on April 15, 2016 (April 15 ALJ's Ruling). These Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the April 15 ALJ's Ruling.

I.
THE COMMISSION MUST CONSIDER OTHER SB 350 RPS PROGRAM AMENDMENTS, D.15-12-025, AND R.16-02-007 THAT IMPACT RPS PROCUREMENT.

The April 15 ALJ's Ruling seeks comments and responses to specific questions on the implementation of "changes" to the RPS Program statute resulting from Senate Bill (SB) 350 (Stats. 2015, ch. 547).[1] The "changes" offered for comment, however, do not encompass all of the SB 350 amendments to the RPS Program statute, but, instead, are limited to those identified by the April 15 ALJ's Ruling as "new compliance periods, "changes to the procurement quantity requirements for the new compliance periods," "new requirements for RPS-eligible short- and long-term contracts and/or using utility-owned generation (UOG) or the ownership agreements for compliance periods after 2020," "changes to excess procurement rules for all compliance

[1] April 15 ALJ's Ruling, at p. 1.

periods beginning January 1, 2021," and "changes to rules governing excess procurement related to early compliance with the new requirements for long term contacts."[2]

While the April 15 ALJ's Ruling asks parties to comment on questions focused on these specific statutory changes only, it also permits parties to "identify and comment on issues that are not addressed in the questions below."[3] In its Comments here, CEERT does respond to certain of the questions asked by the April 15 ALJ's Ruling. However, CEERT also believes that it is imperative for the Commission to consider *other* provisions of SB 350 that change or impact the RPS Program to ensure that the Commission is implementing SB 350 in this proceeding consistent with requirements applicable to statutory construction and with consideration of direction given by the Commission in D.15-12-025, the Amended Scoping Memo and Ruling of Assigned Commissioner issued in this proceeding on February 5, 2016 (Amended Scoping Memo), and Order Instituting Rulemaking (OIR) 16-02-007 (Integrated Resource Planning (IRP)).

With respect to statutory construction, the courts have adopted and applied well-established principles, which have been routinely followed by the Commission in its own decisions.[4] Those principles include, but are not limited to, (1) ascertaining the intent of the Legislature so as to effectuate the purpose of the law,[5] (2) giving words used in a statute a plain and common sense meaning consistent with the statute's "legislative purpose,"[6] (3) construing "a

[2] April 15 ALJ's Ruling, at pp. 1-2; footnote omitted.
[3] Id., at p. 3.
[4] See, e.g., Decision (D.) 01-11-031, at p.6.
[5] *California Teachers Assn*. v. *Governing Bd. of Rialto United School Dist*. (1997) 14 Cal.4th 627, 632; *Dyna-Med, Inc.* v. *Fair Employment Housing Com*. (1987) 43 Cal.3d 1379, 1386.
[6] *California Teachers Assn*., *supra*, 14 Cal.4th at 633; *People* v. *Valladoli* (1996) 13 Cal.4th 590, 597, 599, 602.

statute in context, keeping in mind the nature and purpose of the legislation,"[7] and (4) "reject[ing] an interpretation that would render particular terms mere surplusage, and instead seek to give significance to every word."[8]

The Commission has followed these tenets, especially to avoid statutory construction that will "*frustrate the manifest purpose of the legislation* when considered *as a whole*."[9] On this point, the danger of implementing isolated statutory amendments resulting from a single piece of legislation with an overarching purpose or goal is that doing so could yield interpretations that "frustrate" those goals. In this regard, SB 350, entitled the "Clean Energy and Pollution Reduction Act of 2015," results in the addition, amendment, or repeal of 34 statutes included in various State codes, of which 28 are part of the Public Utilities Code. Certain of these statutory amendments and additions are to the RPS Program, which together with SB 350's other statutory changes, inform the specific type of resource procurement intended to be achieved by SB 350. It is important, therefore, for SB 350's provisions to be read in the context of its legislative purpose and changes "as a whole."

Thus, SB 350 "call[s] for a new set of objectives in clean energy, clean air, and pollution reduction for 2030 and beyond," with one of those objectives including the "increase from 33 percent to 50 percent [of] the procurement of our electricity from renewable sources."[10] SB 350 also makes clear that the role played by an increased level of renewable generation is part of its goal of increasing procurement of resources with "zero or lowest feasible emissions of

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[7] *Dyna Med, Inc*., *supra,* 43 Cal. 3d at 1387*, People V. Valladoli, supra*, 13 Cal. 4th at 602; *Squaw Valley Ski Corp.* v. *Superior Court,* (1992) 2 Cal. App. 4th 1499, 1511.
[8] *Bay Guardian Co. v. New Times Media LLC* (2010) 187 Cal. App. 4th 438, 453-454; see also, *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55. See also, *People vs. Cruz* (1996) 13 Cal. 4th 764, 782.
[9] D.12-05-035, at pp. 14-15; D.06-10-051, at p. 4; emphasis added.
[10] SB 350, Section 2, at p. 2.

greenhouse gases, criteria pollutants, and toxic air contaminants onsite," either alone or, to the extent it serves to "protect system reliability," in combination with each other.[11]

These statutory goals are embedded in SB 350's amendment of the RPS Program statute to now require that renewables procurement resource evaluation pursuant to the statutory "rank ordering and selection" of renewables on a "least cost-best fit" (LCBF) methodology must in fact be based on a "total cost and *best fit* basis," with the words "best fit" having been added by SB 350.[12] SB 350 further amends the RPS Program statute to require that this LCBF process must now also give:

> "(vi) Consideration of any statewide greenhouse gas emissions limit established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code)."
>
> *And*
>
> "(vii) Consideration of capacity and system reliability of the eligible renewable energy resource to ensure grid reliability.

In addition SB 350 further adds subsection (8) to §399.13(a) to require:

> "(8) In soliciting and procuring eligible renewable energy resources, each retail seller shall consider the best-fit attributes of resource types that ensure a balanced resource mix to maintain the reliability of the electrical grid."

CEERT does not dispute that SB 350 also amended the RPS Program statute in the ways identified by the April 15 ALJ's Ruling. However, the absence of any reference in the April 15 ALJ's Ruling to these *other* SB 350 changes to the RPS Program, which also directly impact renewables *procurement*, leaves open how or when the Commission intends to account for these significant changes and what their impact is on whether or how the RPS "retail sellers" in fact have achieved "compliance" in any compliance period added by SB 350 and by any procurement mechanism (i.e., long term contract or utility-owned generation). Clearly, the implementation of

[11] PU Code §400 (a) – (e).
[12] PU Code §399.13(a)(4)(A); emphasis added.

the RPS Program, as now amended, is not simply a matter of bookkeeping or accounting without reference to whether or not the product being procured actually meets the intent and requirements of SB 350 as a whole.

The absence of any reference the SB 350 amendments to the LCBF evaluation methodology in the April 15 ALJ's Ruling not only begins a process of piecemeal implementation of SB 350's renewables "procurement" requirements, but neglects relevant directions of the Amended Scoping Memo, D.15-12-025, and R.16-02-007 (IRP) on the RPS LCBF methodology. In this regard, CEERT has long advocated for a balanced, "best fit" RPS portfolio and the inclusion of a Greenhouse Gas (GHG) emissions metric in the LCBF. CEERT made that proposal again related to the 2015 RPS Program Procurement Plans. Yet, the Commission deferred that proposal in D.15-12-025 on those plans, finding: "This matter will be considered in 2016 as part of the SB 350 implementation and LCBF reform."[13] While the Amended Scoping Memo issued in this proceeding in February 2016 commits to "[r]evising and updating the least-cost best-fit (LCBF) methodology for evaluating RPS-eligible procurement, including revisions mandated by … SB 350,"[14] no ruling encompassing such a direction has been issued to date.

The Amended Scoping Memo also commits to "coordination" with the Commission's implementation of SB 350's integrated resource planning (IRP) Order Instituting Rulemaking (OIR) (R.16-02-007). That OIR has already embraced the RPS LCBF methodology for purposes of IRP resource planning and procurement that, pursuant to SB 350, is supposed to account for

[13] D.15-12-025, at p. 102.
[14] Amended Scoping Memo, at p. 9.

GHG emissions reductions. But, in doing so, the OIR ignores the Commission's failure to date to incorporate GHG emission metrics in the RPS LCBF bid evaluation.[15]

It may be the case that accounting for retail sellers' compliance with new RPS targets and requirements that govern the amount and means of procurement is important. But those rules do not have any greater importance to renewables procurement than focusing on resource evaluation that meets the express statutory direction and goals of SB 350. In fact, with R.16-02-007 proceeding forward to achieve IRP plans by 2017, coupled with its intention to rely on the RPS LCBF methodology, it becomes an urgent matter to ensure that that methodology in fact complies with SB 350.

Thus, *given the express intent of SB 350 to achieve* a "*zero or lowest feasible emissions of greenhouse gases*, criteria pollutants, and toxic air contaminants onsite," either alone or, to the extent it serves to "*protect system reliability*," and to do so by 2030, it is imperative that the Commission starts *today* to plan and develop new approaches and rules that facilitate the identification and procurement of the resources needed to achieve the expected 2030 GHG emission reductions. For both RPS and IRP procurement requirements, that starts with reform of the LCBF that will be applied to both that includes the GHG and reliability considerations required by SB 350. Achieving the 2030 GHG target cost-effectively will require different outcomes and results than reliance on the Commission's existing modeling assumptions and LCBF methodology.

Beginning that work now is critical, especially to permit an appropriately reformed LCBF methodology to apply to RPS solicitations approved for *2016* and going forward. That action can be taken in concert with determining compliance targets or other procurement rules, but, doing so now, will permit the Commission to identify *strategic procurement* aimed at achieving

[15] R.16-02-007, at p. 18.

SB 350's low carbon goals, including valuing both low emissions and enhanced reliability on a system-wide basis. CEERT, therefore, strongly recommends that the Commission issue a ruling here, coordinated with R.16-02-007, to begin the LCBF reform process now, especially to include both the GHG and reliability metrics required by SB 350's amendment to the RPS Program statute.

II.
RESPONSES TO QUESTIONS

Again, it is CEERT's central recommendation above that the Commission start now to implement other key provisions of SB 350 amending the RPS Program statute and coordinate that implementation with R.16-02-007 to facilitate the strategic procurement of "best fit" renewable resources that can achieve SB 350's 2030 goals. CEERT, however, also offers certain responses to the questions posed by the April 15 ALJ's Ruling in Sections 2.3 through 2.5. CEERT reserves the right to respond further on any of the questions posed by the April 15 ALJ's Ruling in Reply Comments to other parties' Opening Comments.

Specifically, Section 2.3 focuses on changes to PU Code Section 399.13(b) enacted by SB 350. Those changes are shown in redlined as follows:

> "(b) A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. **~~The commission may authorize~~ Beginning January 1, 2021, at least 65 percent of the procurement** a retail seller **~~to enter into a contract of less than~~ counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of** 10 **~~years'~~ years or more in** duration **~~with an eligible renewable energy resource, if the commission has established,~~ or in its ownership or ownership agreements** for **~~each retail seller, minimum quantities of~~** eligible renewable energy resources **~~to be procured through contracts of at least 10 years' duration~~**.
>
> The first question posed by the April 15 ALJ's Ruling on this changed language is:
>
> "8. Should the Commission require that the long-term contracts, UOG, or ownership agreements used to comply with Section 399.13(b) be signed, or

> entered into commercial operation, on or after January 1, 2021 (i.e., be *new* contracts or UOG)? Why or why not?"[16]

As noted above, specific principles of statutory construction apply to the implementation of any statute by the Commission, beginning with giving the express terms of the statute their "plain meaning." Nothing in the express language of Section 399.13(b) includes any terminology on the "start date" of any of the agreements that can be used to comply with this section or that the agreements in question must be "new," "signed," or "entered into" "on or after January 1, 2021," as stated in Question 8.[17] In fact, language referencing action taken by a "retail seller" to "enter into a contract" was specifically removed from this section by SB 350.

In that case, and with reference also to Question 9, the retail sellers' obligation established by Section 399.13(b) requires a demonstration to the Commission *from* January 1, 2021, that "at least 65 percent of the procurement a retail seller counts toward the [RPS] requirement of each compliance period shall be from *its* contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources."[18] The reference to "its" contracts as of that date further indicates an intent to examine the retail seller's portfolio as it exists as of, and from, January 1, 2021.

It is not clear to CEERT whether a different "demonstration" of compliance than is in place today would be required. However, in response to Question 12, if the Commission concludes that a change in rules for that purpose is required, such rules should be "set" "now," especially given that compliance with Section 399.13(b) can be advanced to the "compliance period beginning January 1, 2017."[19] Specifically, in the event that a retail seller notifies the Commission that it will meet the long-term contracting provisions specified in Section 399.13(b)

[16] April 15 ALJ's Ruling, at p. 5; emphasis added.
[17] April 15 ALJ's Ruling, at p. 5.
[18] PU Code §399.13(b); emphasis added.
[19] April 15 ALJ's Ruling, at p. 6; PU Code §399.13(a)(4)(B)(iii).

by January 1, 2017, it is important that all associated rules are spelled out in advance. In addition, CEERT recommends that the rules clarify that, once a retail seller meets the long-term contracting provisions specified in Section 399.13(b), that the new rules related to excess procurement calculation pursuant to PU Code Section 399.13(a)(4)(B)(i) and (ii) also come into effect for that retail seller.

III.
CONCLUSION

CEERT appreciates this opportunity to provide its opening comments in response to the April 15 ALJ's Ruling. In addition to its responses to questions specifically posed by that ruling, CEERT strongly recommends that the Commission act now to begin implementation of other key SB 350 changes to the RPS Program statute that also directly impact resource procurement and evaluation, especially to meet the goals and purpose of SB 350, and to do so in active coordination with R.16-02-007 (IRP).

Respectfully submitted,

May 5, 2016

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VERIFICATION

(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Comments of the Center for Energy Efficiency and Renewable Technologies on the Administrative Law Judge's Ruling of April 15, 2016 (Implementation of Certain SB 350 Amendments to RPS Program), have been prepared and read by me and are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on May 5, 2016, at San Francisco, California.

Respectfully submitted,

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