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April 7, 2008

Via U.S. Mail and E-Mail

Hontesto Gatchalian (jnj@cpuc.ca.gov)
California Public Utilities Commission
Energy Division (DMS Branch) – Tariff Unit
505 Van Ness Avenue, Room 4005
San Francisco, CA 94102

RE: Draft Resolution E-4160
CEERT Reply Comments

Dear Mr. Gatchalian:

On March 12, 2008, the Energy Division released Draft Resolution E-4160 (Draft Resolution) for comment. On April 1, 2008, the Center for Energy Efficiency and Renewable Technologies (CEERT) timely submitted and served Opening Comments in opposition to the Draft Resolution. The following are CEERT's Reply Comments, submitted pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Alternate.

On April 2, 2008, an Administrative Law Judge's (ALJ's) Ruling was issued in R.06-02-012 (Renewable Portfolio Standard (RPS) Program Implementation) (April 2 ALJ's Ruling). The April 2 ALJ's Ruling confirms that the Commission "will consider only limited elements of the Draft Resolution [E-4160] at its April 10, 2008 meeting," in particular, only "limited ratemaking aspects of the Draft Resolution."[1] With respect to all other issues, a "workshop has been scheduled to allow full consideration" of those issues.[2]

As to what issues will be resolved by the Draft Resolution and a future workshop process, neither the April 2 ALJ's Ruling or a March 28, 2008, Executive Director's letter is absolutely clear. The Ruling merely repeats the Executive Director's statement that the Draft Resolution will not address Items 5 through 8 listed at page 3 of the April 2 ALJ's Ruling.

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[1] R.06-02-012 (RPS) April 2 ALJ's Ruling, at p. 4.
[2] R.06-02-012 (RPS) April 2 ALJ's Ruling, at p. 4 CEERT notes that notice of such a workshop has not yet been served on the parties or included in the Daily Calendar. CEERT asks, therefore, that the final Resolution E-4160 specifically commit to a process schedule for resolving Items 4 through 8.

A question remains, however, concerning the disposition of Item 4: "Establishing the total dollar cost limitation for costs above the RPS market price referent (MPR) that each utility can expend on the procurement of eligible renewable energy resources."[3] In this regard, the April 2 ALJ's Ruling only references the statement in the Executive Director's letter that Item 4 may be resolved by the Draft Resolution if party comments on that resolution "reveal that Item 4 (total dollar cost limitation) is not the subject of significant disagreement."[4]

In this regard, the party comments submitted on the Draft Resolution show widespread disagreement, especially with the Draft Resolution, as to how the "total dollar cost limitation" is established pursuant to Senate Bill (SB) 1036 and what its impact is on the RPS Program. While most of the commenting parties were utilities and ratepayer advocates seeking to limit customer expenditures on renewables procurement, CEERT has a very different concern about the way in which the Draft Resolution interprets and implements this "cost limitation."

In particular, CEERT believes that the Draft Resolution has interpreted the impact of the availability of this fund in a manner that could prematurely halt and effectively eliminate the 20% renewables by 2010 RPS obligation contrary to the overall statutory intent and provisions of the RPS Program law. CEERT is most concerned about the implications of language included in the Draft Resolution that could result in the RPS mandate being obviated by a lack of "cost limitation" funding, even if a renewables contract meets reasonableness review criteria.[5] CEERT believes that the Commission should not make any findings in this regard unless and until stakeholders have been given notice and the opportunity to address the appropriate statutory interpretation of SB 1036 in a manner that gives meaning to all provisions of the RPS law consistent with its intent.[6]

In fact, because Items 4 through 8 involve significant issues of statutory interpretation, these issues should only be addressed through briefs, formally filed in R.06-02-012 and resolved by Commission decision, subject to appeal pursuant to PU Code §§1731, et seq., and 1756, et seq. While resolutions can be the subject of an "application for rehearing," it is a cumbersome and time consuming process, subject to General Order

[3] R.06-02-012 (RPS) April 2 ALJ's Ruling, at p. 3.
[4] R.06-02-012 (RPS) April 2 ALJ's Ruling, at pp. 3-4.
[5] See, e.g., Draft Resolution, at pp. 7, 11.
[6] Among other things, the Draft Resolution references PU Code §399.15(d)(4) (permitting procurement at above-market costs), but does not attempt to integrate that language with its findings regarding the cost limitation. Further, the Draft Resolution appears to create different and inconsistent review standards depending on contract type or procurement choices that are not supported by the law.

96-B, which requires commencement of a *new proceeding* that starts with the filing of a *formal application*, which is assigned "a docket number."[7]

CEERT, therefore, respectfully requests again that Item 4, along with Items 5 through 8, not be resolved by the Draft Resolution. Instead, these items should be the subject of further comment and briefs.

Respectfully submitted,

April 7, 2008 By: /s/ SARA STECK MYERS
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[7] General Order (GO) 96-B, Section 7.7.2.

CERTIFICATE OF SERVICE

I, Sara Steck Myers, am over the age of 18 years and employed in the City and County of San Francisco. My business address is 122 - 28th Avenue, San Francisco, California 94121.

On April 7, 2008, I served the within document **REPLY COMMENTS OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON DRAFT RESOLUTION E-4160,** with mail and electronic service as prescribed in the instructions accompanying Draft Resolution E-4160, including electronic service on Cheryl Lee (CPUC Energy Division), the service lists in R.06-02-012 and R.06-05-027, and personnel required by Rule 14.5 of the Commission's Rules of Practice and Procedure, as well as delivery of an original and two hard copies by U.S. Mail to Honesto Gatchalian (CPUC Energy Division), at San Francisco, California.

Executed on April 7, 2008, San Francisco, California.

/s/ SARA STECK MYERS
Sara Steck Myers