DOUGLASS & LIDDELL
AN ASSOCIATION OF
PROFESSIONAL CORPORATIONS
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CALIFORNIA 91367-8102
telephone 818.961.3001
facsimile 818.961.3004
Email douglass@energyattorney.com

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Donald C. Liddell, P.C.
2928 2nd Avenue
San Diego, California 92103
Telephone 619.993.9096
Facsimile 619.296.4662

Gregory S.G. Klatt – Of Counsel
411 E. Huntington Drive, Suite 107-356
Arcadia, California 91007
Telephone 818.961.3002
Facsimile 818.961.3004

September 7, 2006

VIA FEDERAL EXPRESS

California Energy Commission
Docket Office, MS-4
Re: Docket No. 06-IEP-1c and No. 03-RPS-1078
1516 Ninth Street
Sacramento, California 95814-5512

Re: Comments of Stirling Energy Systems, Inc. on RPS Issues for 2006 Integrated Energy Policy Report Update – RPS Mid-Course Review Docket Nos.: 06-IEP-1c and 03-RPS-1078

Gentlemen:

Enclosed please find the original and one copy of the Comments of Stirling Energy Systems, Inc. on RPS Issues for 2006 Integrated Energy Policy Report Update – RPS Mid-Course Review.

Please file the original, conform the copy and return the filed-stamped copy in the self-addressed stamped envelope provided.

Should you have any question regarding the foregoing please fee free to contact the undersigned.

Very truly yours,

Michelle Dangott
Office Administrator
DOUGLASS & LIDDELL

/md
Enclosures

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:	
Informational Proceeding and Preparation of the 2007 Integrated Energy Policy Report	**Docket No. 06-IEP-1c** **IEPR Proceeding**
Implementation of Renewables Portfolio Standard Legislation (Public Utilities Code Sections 381, 383.5, 399.11 through 399.15, and 445; [SB 1038], [SB 1078])	**Docket No. 03-RPS-1078** **RPS Proceeding**

COMMENTS OF STIRLING ENERGY SYSTEMS, INC.
ON RPS ISSUES FOR 2006 INTEGRATED ENERGY POLICY REPORT
UPDATE - RPS MID-COURSE REVIEW

I. BACKGROUND

Stirling Energy Systems, Inc. (Stirling) strongly supports the efforts of the California Energy Commission (CEC) to review, and take steps to correct, identified shortcomings in the California Renewable Portfolio Standard (RPS) Program, and respectfully submits the following comments in support of the 2006 Integrated Energy Policy Report Update and RPS Mid-course Review. These comments are addressed to only one of the topics explored during the August 22, 2006, Committee Workshop on the Mid-Course Review of the Renewables Portfolio Standard Process, namely "Minimizing Contract Failure" (Attachment "A", Questions for August 22 Workshop on the RPS Mid-Course Review, p. 2). Since the subject of the workshop was *mid-course* corrections, Stirling's comments focus exclusively on what can be done to increase the likelihood of success for RPS projects with existing power purchase agreements that have been approved by the California Public Utilities Commission (CPUC). There appears to be a very broad consensus and high level of concern among RPS Program stakeholders that the primary reason for the looming delay in bringing RPS projects with power purchase agreements (PPAs) that have been approved by the CPUC on-line, particularly in Southern California, will be the

need to upgrade existing inadequate transmission network infrastructure. Stirling is one of those many concerned stakeholders, and accordingly submits that the key to success in meeting the goals of the RPS program is *following through* on the policy measures adopted in the CPUC's Interim Opinion on Procedures to Implement the Cost Recovery Procedures of Public Utilities Code Section 399.25 (D.06-06-034, June 15, 2006), referred to in these Comments as the "RPS Transmission Decision" to assure that they are having the intended effects.

Stirling further submits that the CEC should also work collaboratively with the CPUC and the California Independent System Operator (CAISO) to: (a) encourage recourse by utilities to interim transmission network upgrades while permanent system upgrades are being implemented, and (b) accelerate utility planning and development of long overdue network transmission system upgrades "South of Lugo".

Finally, Stirling strongly urges the CEC to actively support proposals to mitigate the ultimate risk to RPS projects of physical congestion that could limit delivery of available RPS qualified generation. There are fair ways to share the risk of congestion caused by delay in implementing transmission system upgrades such as by potentially reforming existing PPAs. As this topic will undoubtedly be raised soon at the CPUC, the CEC should engage in this dialogue and support such a proposal at the CPUC.

II. PROACTIVE MEASURES ADOPTED BY THE CPUC TO FACILITATE ACTION BY THE UTILITIES TO DEVELOP TRANSMISSION INFRASTRUCTURE NEEDED FOR RPS PROJECTS THAT HAVE EXISTING PPAs THAT HAVE BEEN APPROVED BY THE CPUC SHOULD BE ACTIVELY MONITORED AND MANAGED.

In June of this year, the CPUC adopted three policy measures that have the potential to accelerate development of transmission infrastructure, but they can only have meaningful near-term (*i.e.* mid-course) impact if they are actively monitored and managed by the CPUC, with the support of the CEC.

A. THE UTILITIES SHOULD VOLUNTEER TO BUILD AND PAY FOR UP-FRONT ALL TRANSMISSION NETWORK UPGRADES NEEDED TO INTERCONNECT RPS PROJECTS THAT HAVE EXISTING POWER PURCHASE AGREEMENTS THAT HAVE BEEN APPROVED BY THE CPUC.

The RPS Transmission Decision was, of course, issued in the CPUC's Investigation to Facilitate Proactive Development of Transmission Infrastructure to Access Renewable Energy Resources for California (I.05-09-005, filed September 8, 2005), referred to in these Comments as the "Investigation." The initial priority and focus of the Investigation was to clarify and affirm the CPUC's commitment to implement Section 399.25 of the Public Utilities Code, the so called "backstop authority", for recovery of the costs of network transmission upgrades installed by utilities to support RPS projects in either wholesale or retail rates. In the RPS Transmission Decision, the CPUC prefaced its broad policy statement by expressing its expectation that, in virtually all cases, the cost of network transmission upgrades will be recoverable, on a rolled-in basis, through wholesale rates approved by the FERC, and made the following sweeping declaration:

> "We expect that in the majority of cases, the utilities will volunteer to build and pay for up front, on a non-discriminatory basis, all transmission network upgrades needed to interconnect both individual renewable projects and multi-developer renewable projects (emphasis added)"(Mimeo, p. 22).

The CPUC went on to dispel any uncertainty that might create a disincentive to the utilities' agreeing to pay for the cost of network transmission upgrades by clearly stating that California's backstop authority will be implemented in any event. The CPUC issued the following express Order:

> ". . . [t]ransmission facilities that meet one of the following criteria are eligible for Section 399.25 cost recovery: (1) new high, voltage bulk-transfer, transmission facilities, whether classified as network or gen-tie, that are designed to serve multiple RPS-eligible generators where the amount added transmission capacity will likely be utilized by RPS-eligible generation projects to meet the state-mandated RPS goal, or (2) network transmission facilities that are required to connect an RPS-eligible resource that is necessary for the achievement of RPS goals and that has an approved power purchase contract." (Mimeo, p.35).

Stepping up to fund needed upgrades would be an immediate first step in showing the financial community that utilities have "skin in the game", and indeed could be expected to take equity ownership positions in RPS projects that have existing PPAs that have been approved by the CPUC. Directly aligning the financial interest of the utilities with those of RPS project developers and the CPUC in this way would clearly have a very positive impact on the cost of financing RPS projects. The question that both the CPUC and the CEC should be asking now, in mid-course, is: Are the utilities doing everything that can be done to take full advantage of Section 399.25 "back-stop" authority and the CPUC's express direction in the RPS Decision by up-front funding of needed transmission system upgrades?

B. THE UTILITIES SHOULD FILE ADVICE LETTERS SEEKING CPUC APPROVAL TO RECORD AND RECOVER STUDY AND PROJECT DEVELOPMENT COSTS PRIOR TO THE FILING OF APPLICATIONS FOR APPROVAL OF TRANSMISSION NETWORK UPGRADES WHEN THERE IS REASON TO BELIEVE THAT COST RECOVERY IN RETAIL RATES MAY BE REQUESTED.

In the RPS Transmission Decision, the CPUC also specified the exact procedure it expects to be followed by the utilities in order to be assured of the benefit of rate recovery:

> "At such time as a utility files an application for a certificate to construct transmission line facilities that it believes are subject to § 399.25 cost recovery, the utility may also file an Advice Letter requesting permission to establish a memorandum account to record the costs of the facilities unless the utility has previously filed a pre-application Advice Letter. If the proposed facilities are granted rolled-in rate treatment at FERC, the costs recorded would be removed from the memorandum account and included in the utility's TRR proceeding at FERC. If the proposed facilities are not granted rolled-in rate treatment at FERC, the costs recorded in the memorandum account should be included as part of the rate base, costs, and capital-related revenue requirement request to be reviewed in the utility's next general rate case." (Mimeo, pp. 26-27).

SDG&E, for example, has already included such a request for Section 399.25 rate recovery as part of its recent Application for a Certificate of Public Convenience and Necessity (CPCN) for its Sunrise Powerlink Project (A.06-08-010, filed August 4, 2006, and A.05-12-014, filed December 14, 2005). In the RPS Transmission Decision, the CPUC stated that "the utilities are authorized to file Advice Letters for approval of pre-application study costs (emphasis added)" (Mimeo, p.35). The CPUC thus effectively broadened the authority it had previously

given to Southern California Edison (SCE) in issuing Resolution E-3969 on February 16, 2006, that approved an Advice Letter filing by SCE requesting approval of a memorandum account to track costs for studies and other development costs in advance of filing a CPCN for transmission system upgrades expected to be needed for RPS project development in the Tehachipi area. Here Stirling submits that the question both the CPUC and the CEC should be asking now is: Are the utilities doing everything that can be done to take full advantage of the procedural direction authorized by the CPUC?

C. THE UTILITIES SHOULD WORK WITH DEVELOPERS THAT HAVE CPUC-APPROVED PPAs IN REVIEW AND APPROVAL OF NEEDED TRANSMISSION SYSTEM UPGRADES USING DIRECTIVES ISSUED BY THE CPUC AND THE CEC TO STREAMLINE REVIEW OF RPS TRANSMISSION PROJECTS.

The Executive Director of the CPUC issued an Executive Director's Statement Establishing Transmission Project Review Streamlining Directives to CPUC staff on July 13, 2006 to use as a blueprint for a streamlined review process, consistent with environmental review requirements. For RPS projects with PPAs that have been approved by the CPUC that will come within the CEC's siting jurisdiction, the CEC should: (a) issue a similar directive to CEC staff addressing the CEC's comparable internal processes, and (b) assure that the directions given to the staff of both Commissions are written consistently (*ie.* no gaps or overlap) and are administered in a collaborative manner. In this instance, the question that both the CPUC and the CEC should be asking now is: Are the staffs of the CPUC and the CEC acting collaboratively, along with developers and utilities, to take full advantage of specific management direction to streamline the CPCN and power plant site licensing processes?

III. THE CEC SHOULD WORK COLLABORATIVELY WITH THE CPUC AND THE CAISO TO ENCOURAGE INVESTMENT IN INTERIM TRANSMISSION SYSTEM UPGRADES, AND ACCELERATE PLANNING FOR UPGRADING THE TRANSMISSION SYSTEM SOUTH OF LUGO.

In addition to following through on the measures already adopted by the CPUC in the RPS Transsmission Decision, the CEC should promote a collaborative planning process that requires the CEC and the CPUC and the CAISO to encourage the utilities to adopt, and the CPUC to grant rate recovery for, interim "work arounds" while permanent upgrades are being

installed. The CEC should also promote an expedited process to plan for and install transmission system upgrades to accommodate RPS power flows "South of Lugo".

A. THE UTILITIES SHOULD BE ENCOURAGED TO PROACTIVELY IMPLEMENT INTERIM TRANSMISSION SYSTEM UPGRADES TO ALLOW RPS PROJECTS TO BEGIN OPERATING WHILE PERMANENT UPGRADES ARE BEING IMPLEMENTED.

In its Opinion Conditionally Approving Procurement Plans for 2006 RPS Solicitations (D.06-05-039), the CPUC took the occasion to sternly admonish the utilities in no uncertain terms to leave no stone unturned in furtherance of RPS project success as follows:

> "...electrical corporations must bring us their concerns and problems along with reasonable proposed solutions in time for us to respond and allow this program to succeed. In a future determination of an electrical corporation's compliance with an RPS Plan and program requirements, we will consider the extent to which the electrical corporation brought a problem to us on a timely basis, and proposed a reasonable and realistic solution. We will not be sympathetic to granting waivers or reducing penalties due to lack of transmission, for example, without the electrical corporation demonstrating that it took all reasonable action to bring the problem to our attention timely, presented realistic solutions, filed applications timely for necessary projects, and took any and all other actions that could reasonably have been expected to address, if not solve, the problem."(Mimeo, p. 19).

A prime, and obvious, example of the kind of proactive thinking the CPUC would be looking for is interim interconnection arrangements to enable RPS projects to come on line as soon as possible. A good recent example of this approach is the CPUC's approval in December 2004 of earlier operation of SDG&E's new 230 kV Mission-Miguel 230 kV line by allowing temporary operation of certain facilities at 230 kV by June 2005 until the permanent 230 kV line could be completed (See SDG&E August 2006 Transmission Project Status Report, p. 2). It is certainly reasonable to ask the utilities to demonstrate that they have seriously considered such approaches, particularly if they know that single-mindedly pursuing the "best" long-term transmission system upgrade approach will delay an RPS project.

B. THE CEC, THE CPUC, AND THE CAISO SHOULD COLLABORATE TO ACCELERATE PLANNING AND INSTALLATION OF TRANSMISSION SYSTEM UPGRADES SOUTH OF LUGO.

It has recognized for a number of years that the transmission system South of the Lugo Substation known generally as "South of Lugo" is in need of upgrading to accommodate potential power flows South of the Lugo Substation from RPS projects that are expected to be located to the North (See e.g. CPUC's SB 1038 Electric Transmission Plan for Renewable Resources in California, December 1, 2003). For reasons that are not clear, the need for transmission upgrades South of Lugo transmission system upgrades were reviewed at some length in the CEC's Strategic Transmission Investment Plan (November 2005), but did not make it to the list of upgrades that were placed ahead of it in the transmission planning queue (PVD2, Sunrise Powerlink, Tehachipi, Imperial Valley and Trans-Bay Cable Project). Since there are presently more than 3,000 MW of RPS transmission projects in the CAISO's Interconnection Study Queue, it would seem that South of Lugo could reasonably moved up in order of priority given to transmission projects by the CPUC and the CEC.

IV. THE CEC SHOULD SUPPORT PROPOSALS AT THE CPUC TO EQUITABLY REFORM EXISTING RPS PPAs TO ENABLE DEVELOPERS AND UTILITIES TO BETTER ALLOCATE THE RISK OF PHYSICAL CURTAILMENT TO TRANSMISSION SYSTEM UPGRADE DELAYS, PARTICULARLY SOUTH OF LUGO

In parallel with the Investigation, the CPUC has issued an Order Instituting Rulemaking to Continue Implementation and Administration of the RPS Program (R.06-05-027, filed May 5, 2006), referred to in these comments as the "Rulemaking," that provides a forum for mid-course adjustment in PPA terms and conditions that could be helpful in reducing, or even eliminating the risk of project failure due to physical transmission system congestion caused by delays in necessary upgrades. In a Scoping Memo and Assigned Commissioner's Ruling (Scoping Memo) issued on July 21, 2006 (Attachment A, Section 2, titled "Risk Sharing") the CPUC has opened the door wide to proposals such as affording RPS projects regulatory must run status that is presently enjoyed by qualifying facilities. Other reasonable ways of re-allocating physical congestion risk could include bidding as a price taker and use of congestion revenue rights. The preliminary schedule in the Scoping Memo could potentially lead to meaningful mutually

beneficial reformation of mid-course PPAs within as little as six months, particularly with the active support of the CEC

V. CONCLUSION

The CEC can take a strong role in mid-course corrections to the RPS program in several concrete ways: (a) helping the CPUC assure follow through by the utilities of policies adopted in the Investigation, (b) working collaboratively with the CPUC and the CAISO to encourage interim upgrade solutions (with CPUC rate recovery) and accelerate efforts to upgrade the transmission system South of Lugo, and (c) actively supporting proposals in the Rulemaking to better allocate the risk of physical congestion by mutually beneficial reformation of existing RPS PPAs. Stirling appreciates this opportunity to provide input to the CEC on a number of ways that are readily available to minimize failure of RPS projects that in mid-course at this time, and would be pleased to supplement these comments in greater detail in the future.

Respectfully submitted,

Donald C. Liddell

DOUGLASS & LIDDELL

Attorneys for:
STIRLING ENERGY SYSTEMS

September 7, 2006