

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking To Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

R.11-05-005
(Filed May 5, 2011)

**REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO OPENING COMMENTS ON ORDER INSTITUTING RULEMAKING
AND REQUEST FOR PARTY STATUS**

Sue Mara
RTO ADVISORS, L.L.C.
164 Springdale Way
Redwood City, CA 94062
Telephone: (415) 902-4108
Facsimile: (650) 369-8268
E-mail: sue.mara@rtoadvisors.com

On Behalf of:
RETAIL ENERGY SUPPLY ASSOCIATION

June 8, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking To Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

R.11-05-005
(Filed May 5, 2011)

**REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO OPENING COMMENTS ON ORDER INSTITUTING RULEMAKING
AND REQUEST FOR PARTY STATUS**

In accordance with the *Order Instituting Rulemaking Regarding the Implementation and Administration of the Renewables Portfolio Standard* (“OIR”) issued by the California Public Utilities Commission (“CPUC” or “Commission”) on May 10, 2011,¹ and the additional direction provided in the *Administrative Law Judge’s Ruling Setting Prehearing Conference* (“Ruling”) issued May 23, 2011,² the Retail Energy Supply Association (“RESA”)³ submits this reply to opening comments filed May 31, 2011. In addition, RESA respectfully requests party status in this proceeding in accordance with Section 1.4 of the CPUC’s Rules of Practice and Procedure and Section 6 of the OIR.⁴

¹ OIR, R.11-05-005, May 10, 2011, Ordering Paragraph No. 8, p. 23.

² Ruling, R.11-05-005, May 23, 2011, pp. 2-3.

³ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

⁴ OIR, p. 17.

I. REQUEST FOR PARTY STATUS

RESA is a non-profit trade association of independent corporations that are involved in the competitive supply of electricity and natural gas. RESA and its members are actively involved in the development of retail and wholesale competition in electricity and natural gas markets throughout the United States. Some RESA members are electric service providers (“ESPs”) currently serving retail customers in California and others are considering entering the California retail electric market. The Commission’s Rulemaking will determine implementation of a 33% renewable portfolio standard (“RPS”) for ES Ps, which will directly affect RESA members participating in the California retail electric market and those considering market entry. Accordingly, RESA plans to participate as an active party in this proceeding. RESA’s interests are not represented by any other party to this proceeding.

Services of notices, orders and other communications and correspondence in this proceeding should be directed to RESA’s lead representative at the address below:

Sue Mara
RTO ADVISORS, L.L.C.
164 Springdale Way
Redwood City, CA 94062
Telephone: (415) 902-4108
E-mail: sue.mara@rtoadvisors.com

II. INTRODUCTION

RESA finds significant agreement among the comments of California’s retail sellers regarding the urgency and priority of RPS issues to be addressed in this proceeding to conform CPUC RPS rules and requirements with Senate Bill (“SB”) 2 1X and implement other CPUC directives.

In particular, RESA supports the comments submitted by the Alliance for Retail Energy Markets (“AReM”),⁵ which clearly identify the issues requiring urgent resolution by this Commission and for which AReM seeks resolution by Fall, 2011. In addition, AReM notes the extensive uncertainty created by provisions of SB 2 1X, which is not yet effective under California law. This uncertainty directly affects both procurement and compliance by all retail sellers, particularly regarding the use of flexible compliance tools previously approved by the Commission,⁶ the precise compliance obligations that apply to each year beginning with 2010, and the rules for counting previous procurement under then-effective RPS rules toward future compliance.⁷

Furthermore, high levels of regulatory uncertainty can lead to higher risk premiums for direct access customers and create an un level playing field between ESPs and the utilities (who enjoy guaranteed cost recovery). As AReM eloquently notes: “[m]arket uncertainty creates market risk, which in turn makes striking transactions between buyers and sellers more difficult since each side strives to incorporate their perception of risk into their buying and selling transactions and into their investment option analyses. Not only is consummating transactions made more difficult by the higher level of market uncertainty, it directly translates into higher costs for consumers.”⁸ In summary, quickly achieving clarity on RPS obligations, and the method and timeline for meeting those obligations, is imperative.

⁵ *Opening Comments of the Alliance for Retail Energy Markets On Order Instituting Rulemaking Regarding Implementation and Administration of the Renewables Portfolio Standard*, R.11-05-005, May 31, 2011.

⁶ AReM Comments, *loc. cit.*, p. 3.

⁷ AReM Comments, *loc. cit.*, p. 6.

⁸ AReM comments, *loc. cit.*, p. 3.

III. REPLY

RESA agrees with other ESPs that the Top 3 priorities of topics should be:

1. Modify RPS compliance rules;
2. Modify renewable energy credit (REC) trading rules; and
3. Modify RPS procurement rules.⁹

Many responses regarding priorities were much more detailed than identifying only the Top 3 priorities among the principal topics. In this regard, RESA's position may vary slightly from other retailers.

However, RESA specifically disagrees with the investor-owned utilities ("IOUs") on the ranking of the 10 -year contract requirement pursuant to §399.13(b) of SB 2 1X. The IOUs rank this issue in the lowest tier of priorities,¹⁰ which would allow the Commission to delay resolution until as late as 2013. ¹¹ RESA agrees with AReM and other ESPs that this issue is an urgent matter requiring a Commission decision in Fall, 2011.

In particular, RESA agrees with the comments of AReM,¹² Noble Americas Energy Solutions ("Noble"),¹³ Shell Energy North America ("Shell"),¹⁴ and Marin

⁹ See, for example: *Noble Americas Energy Solutions LLC*, R.11-05-005, May 31, 2011, p. 3 and AReM Comments, p. 4.

¹⁰ *Joint Parties' Comments on the On The Order Instituting Rulemaking 11 -05-005*, R.11-05-005, May 31, 2011, Attachment 1, p.2.

¹¹ The IOUs propose that this issue be addressed in Tier 3, their lowest tier. PG&E suggests (at 10) a schedule for Tier 3 that includes a Commission decision on December 31, 2012; SCE argues (at 10) that a prehearing conference to address the scope for the Tier 3 issues could be held in the 3rd Quarter of 2012, but does not otherwise provide a specific schedule; SDG&E does not suggest a schedule for Tier 3.

¹² AReM comments, *loc. cit.*, p. 4.

¹³ Noble Comments, *loc. cit.*, p. 5.

¹⁴ *Opening Comments of Shell Energy North America, L.P.*, R.11-05-005, May 31, 2011, pp. 4-5.

Energy Authority (“MEA”),¹⁵ each of which has also identified the issue of long-term procurement contracts as one of its top three priorities. As described above, RESA’s members include both retail providers that are currently operating in the marketplace and members considering entering the California market. ESPs currently operating in the market will be reluctant to invest additional resources into the California market until obligations regarding long-term procurement of renewables are clarified. Similarly, additional market entry by other electric retail providers will not occur as long as there is uncertainty about the precise RPS requirements that ESPs must meet under California law and regulation. Therefore, RESA requests that the Commission address the 10-year contract requirement as one of its top priorities.

RESA is also concerned about the timing of new obligations that will apply to market entrants. Thus, RESA would rank as a top priority issues identified in Section 6.2 of the OIR¹⁶ to clarify when obligations commence for new market entrants. While not explicitly mentioned in Attachment A of the Ruling, RESA assumes this will be covered under the first principal topic – modifying RPS compliance rules.

Another significant, but undefined obligation, is the Commission’s new requirement pursuant to Decision (“D”) 11-01-026 that ESPs submit RPS procurement plans. The OIR notes the requirement,¹⁷ but is silent on where the issue will be addressed. RESA concurs with Noble¹⁸ that the Commission must define, as a top priority, rules for

¹⁵ *Comments of Marin Energy Authority On The Order Instituting Rulemaking To Develop Additional Methods To Implement the California Renewables Portfolio Standard Program*, R.11-05-005, May 31, 2011, p. 5.

¹⁶ OIR, p. 10.

¹⁷ OIR, footnote 10, p. 15.

¹⁸ Noble, *loc. cit.*, p. 5.

RPS procurement plans specific to ESPs that appropriately reflect the differences in Commission jurisdiction relative to the IOUs.

Finally, RESA disagrees with the approach and priority requested by Southern California Edison (“SCE”) regarding flexible compliance rules.¹⁹ SCE seems to depart from its utility brethren in requesting that the Commission bifurcate its consideration of modifications to the flexible compliance rules by addressing “banking” issues separately from other flexible compliance rules. SCE further recommends that only “clarity to banking rules” be addressed as a top priority.²⁰ No other IOU or ESP takes this position. In fact, Pacific Gas and Electric,²¹ San Diego Gas & Electric,²² AReM,²³ MEA,²⁴ Noble,²⁵ Shell²⁶ and the Western Power Trading Forum²⁷ all identify flexible compliance *and banking* rules²⁸ as one of their top three priorities. RESA concurs.

IV. CONCLUSION

RESA is a nationwide trade association of competitive retail suppliers, whose members participate in California’s retail electricity markets or are considering such

¹⁹ This is the second sub-issue listed under Issue No. 1, OIR, Attachment A, p. 1.

²⁰ *Comments of Southern California Edison Company On Order Instituting Rulemaking Regarding Implementation and Administration of the Renewables Portfolio Standard*, R.11-05-005, May 31, 2011, p. 4.

²¹ *Pacific Gas and Electric’s Opening On The Order Instituting Rulemaking 11-05-005*, R.11-05-005, May 31, 2011, p. 7.

²² *Comments of San Diego Gas & Electric Company On The Order Instituting Rulemaking 11-05-005*, R.11-05-005, May 31, 2011, p. 3.

²³ Ranked as “Urgent” in AReM’s categorization, which is AReM’s top tier. See, AReM Comments, *loc. cit.*, Exhibit A, p. 1.

²⁴ MEA Comments, *loc. cit.*, p. 5.

²⁵ Noble Comments, *loc. cit.*, pp. 3-4.

²⁶ Shell Comments, *loc. cit.*, pp. 3, 5-6.

²⁷ *Comments of the Western Power Trading Forum On The Order Instituting Rulemaking To Develop Additional Methods To Implement the California Renewables Portfolio Standard Program*, R.11-05-005, May 31, 2011, pp. 3-4.

²⁸ A sub-issue under Issue No. 1, OIR, Attachment A, p. 1.

participation. For the reasons discussed above, RE SA respectfully requests that the Commission:

- Grant RESA's request for party status;
- Adopt AReM's schedule and categorization of urgent and lower priority issues;
- Address, as a top priority, issues that affect current retail operations and potential future market entry, including specifying RPS procurement obligations for ESPs beginning in 2010, determining modifications to flexible compliance and banking rules, defining ESP rules for submitting RPS procurement plans, resolving the 10-year contract requirement pursuant to SB 2 1X, and specifying when RPS obligations begin for new entrants.

Respectfully submitted,



Sue Mara
RTO ADVISORS, L.L.C.
164 Springdale Way
Redwood City, CA 94062
Telephone: (415) 902-4108
E-mail: sue.mara@rtoadvisors.com

On Behalf of:
RETAIL ENERGY SUPPLY ASSOCIATION

June 8, 2011