BEFORE THE PUBLIC UTILITIES COMMISSION OF

THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program	Rulemaking 08-08-009 (Filed August 21, 2008)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE ORDER INSTITUTING RULEMAKING REGARDING IMPLEMENTATION AND ADMINISTRATION OF THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Matthew Freedman
The Utility Reform Network
115 Sansome Street, 9th floor
San Francisco, CA 94104
415-929-8876 x304
matthew@turn.org
June 9, 2011

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE ORDER INSTITUTING RULEMAKING REGARDING IMPLEMENTATION AND ADMINISTRATION OF THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Pursuant to Ordering Paragraph 8 of the Order Instituting Rulemaking, TURN submits these reply comments on the scope and scheduling of issues to be addressed in this proceeding. As a general matter, TURN does not intend to use this filing to litigate policy and legal matters and assumes that the Commission will provide an opportunity for parties to address substantive outcomes on specific issues at a future date.

The volume of opening comments, and the breadth of positions expressed by parties, demonstrates the need to compartmentalize and prioritize the implementation of key provisions of SBx2 in order to ensure that retail sellers can move forward with bulk procurement prior to the end of 2011. Various parties identify the end of 2011 as critical due to the expiration of lucrative federal tax benefits (especially those provided by Section 1603 of the American Recovery and Reinvestment Act) that can yield lower prices for customers.[1] TURN agrees that the Commission should identify a discrete set of issues that can be resolved in a first phase of implementation targeted for completion in late 2011. Issues that are less time sensitive and are likely to require significant litigation (or fact finding) should be moved to a later phase in order to ensure that the transition the 33% RPS regime can begin immediately.

I. THE FIRST PHASE OF IMPELEMENTATION SHOULD BE LIMITED TO A SET OF RESOLVABLE ISSUES THAT WILL ALLOW RETAIL SELLERS TO EXECUTE NEW CONTRACTS

Consistent with the positions taken in joint comments filed with PG&E and other parties, TURN urges the Commission to resolve the following issues in the first implementation phase:

[1] See Opening comments of Iberdrola; Opening comments of IEP, LSA and CalWEA.

• Procurement targets and timetables for the three compliance periods – 2011-2013, 2014-2016 and 2017-2020.

• Banking rules including the restrictions on applying excess compliance in one period to a subsequent period for procurement associated with unbundled RECs or contracts of less than 10 years in duration.[2]

• Seams issues between the 20% and 33% program relating to compliance accounting -- includes grandfathering of previous contracts and erasure of deficits for retail sellers with less than 14% of retail sales from renewable procurement in 2010.[3]

• Renewable product definitions pursuant to §399.16 and the methodology for calculating compliance with the procurement limitations established in that section.

• Procurement requirements for newly established ESPs and CCAs.

• Procurement obligations for electrical corporations under §399.17 and clarifying any specific exemptions granted to these entities.

TURN believes that this list is significant and will consume substantial amounts of time and effort. Expanding the list to include other controversial topics will decrease the likelihood of successfully resolving the first phase by late 2011. Based on the review of opening comments, TURN does not believe that any other issues must be

[2] Opening comments of SCE, page 5.
[3] A related issue involves the claim by Pacificorp and AREM that any procurement in excess of 14% in 2010 should count as bankable excess that can be carried forward into the 2011-2013 compliance window. This claim is incorrect and is based on a misreading of the statutes. The Commission should correct this misperception and resolve this issue in the first phase. See opening comments of Pacificorp, pages 9-10; opening comments of AREM, page 4.

resolved in order to allow retail sellers to execute substantial volumes of power purchase contracts in 2011.

II RENEWABLE PRODUCT DEFINITIONS ARE WITHIN THE SOLE PURVIEW OF THE COMMISSION AND REQUIRE ADDITIONAL IMPLEMENTATION ACTIVITY

Some parties suggest that certain elements of the renewable product definitions outlined in §399.16 require no additional process either because the California Energy Commission is the proper venue or because the record from R.08-08-009 is sufficient to reach final conclusions without additional comments. TURN strongly disagrees with these recommendations.

Shell and WPTF assert that the definition of "firmed and shaped" in §399.16(b)(2) is properly within the purview of the California Energy Commission (CEC) and should be excluded from the implementation plan in this rulemaking. Instead, these parties urge the Commission to conclude that any transaction satisfying the previously applicable CEC delivery requirements for eligible renewable energy resources (including the infamous footnote 3 deals) automatically qualifies as "firmed and shaped".[4] This suggestion is incorrect and should be rejected. SBx2 assigns this task to the Public Utilities Commission.

It is obvious to any observer of the legislative process that the highly deficient and easily gamed eligibility rules previously adopted by the CEC were a key driver behind the establishment of the requirements in §399.16. Under the CEC guidelines, there is little practical difference between a "firmed and shaped" product and an unbundled REC. As a result, allowing the CEC definitions to persist would maintain an illusory difference between products clearly intended by the Legislature to be materially distinct.

[4] Opening comments of Shell, page 7; Opening comments of WPTF, page 6.

The Legislature intended for the Public Utilities Commission to make all determinations related to the products identified in this section. It makes no sense to conclude, as WPTF and Shell propose, that the definition of "firmed and shaped" should be made by the CEC while other product definitions should be left to the CPUC. This outcome defies common sense and would be legally problematic.

In a similar vein, Northwest Energy Systems argues that any project relying upon firm transmission rights to schedule their power into a California Balancing Authority should automatically be deemed to meet the requirements of §399.16(b)(1)(A).[5] Northwest urges the Commission to simply affirm this understanding rather than considering comments from parties. This suggestion should be rejected since the statute requires that power from a resource located outside a California Balancing Authority (CBA) demonstrate that any power meeting this product definition be scheduled into a CBA "without substituting electricity from another source."[6] There is no guarantee that a generator holding firm transmission rights would necessarily satisfy this condition. The ruling sought by Northwest would omit key elements of the requirement and is therefore premature. The Commission must establish criteria for eligibility and create a mechanism to monitor compliance.

III THE COMMISSION SHOULD NOT EXPEDITE THE IMPLEMENTATION OF THE SB 32 FEED-IN TARIFF PROGRAM

Several parties insist that the Commission should prioritize the implementation of SB 32 ahead of many other core RPS program design issues. These parties believe that any further delays in SB 32 implementation will harm the RPS program.[7] While TURN appreciates the desire to finalize pricing, interconnection rules, contracting

[5] Comments of Northwest Energy Systems, page 6.
[6] Cal. Pub. Util. Code §399.16(b)(1)(A)(*pending)*
[7] Opening comments of UCS, page 4; Opening comments of Sustainable Conservation, page 1; Opening comments of CEERT, pages 2-4; Opening comments of AECA, page 2.

protocols, and other elements of the SB 32 feed-in tariff, there is no urgent need to place these tasks ahead of core RPS issues that demand quick resolution.

These parties underestimate the amount of time required to litigate many of the SB 32 program elements. The process is likely to be highly contentious and would prove to be a major distraction if the Commission decides that this program should be given the highest priority. If the Commission wants to expedite the resolution of key RPS program design features necessary to allow retail sellers to contract for significant volumes of renewable power, issues that are not central to the RPS program should not be placed in the first phase.

TURN agrees with SCE that SB 32 should be moved into a third phase of implementation with the goal of final resolution by the end of 2012.[8] Alternatively, TURN would support the Solar Alliance proposal to leave SB 32 issues in R.08-08-009 for resolution on a separate timeline.[9]

IV THE SBX2 COST CONTAINMENT MECHANISM REQUIRES CAREFUL STUDY, WILL NOT CONSTRAIN PROCUREMENT IN 2011, AND SHOULD BE DEFERRED UNTIL A LATER PHASE

A number of parties argue that the cost containment provisions of SBx2 should be a high priority item and must be used to assess the reasonableness of pricing for any future renewable procurement by the IOUs. CLECA, Solar Alliance, DRA and LSA all urge the Commission to establish the cost limitation as part of the first phase of the proceeding.[10] TURN strongly disagrees and urges the Commission to address cost containment issues in a later phase of the proceeding.

TURN was deeply involved in the development of the cost containment provisions of

[8] Opening comments of SCE, page 10.
[9] Opening comments of Solar Alliance, pages 3-4.
[10] Opening comments of CLECA, page 2; Opening comments of Solar Alliance, page 2; Opening comments of DRA, page 3; Opening comments of LSA, page 2; Opening comments of Golden State Water, pages 2-3.

SBx2 and believes that this mechanism is an important feature of the RPS program. The implementation of an initial cost cap requires significant efforts by all parties to develop a robust and realistic mechanism that will constrain the achievement of overall program goals if the cumulative costs exceed predetermined thresholds. Since the Commission will be prohibited from modifying the cap prior to 2017, it is very important not to rush to establish cumulative cost limitations in the first year of the program.

Moreover, there is no chance that the IOUs will exceed the cap with procurement occurring in 2011. The Legislature clearly intended that the cost cap be designed to enable the achievement of the ambitious targets outlined in SBx2. It would be unreasonable to assume that the first year of IOU procurement could exceed cost limitations intended to cover procurement occurring over the next 9 years. Prior to the establishment of the cap, the Commission can determine the reasonableness of contract pricing by reviewing the solicitation results and ensuring that the IOUs have selected the most competitive and viable bids.

TURN therefore urges the Commission to defer development of a cost limitation until 2012. The process of developing this mechanism should involve workshops, comments, and updated cost models from E3 and other parties. Ensuring sufficient time will increase the likelihood that the mechanism is well constructed and can provide useful guidance to the IOUs over time.

V SMALL AND MULTIJURISDICTIONAL UTILITIES

A number of small and multi-jurisdictional utilities request that the Commission immediately find that these entities are exempt from certain RPS program requirements that apply to larger IOUs. BVES, CalPeco and Pacificorp seek different

compliance rules pursuant to the provisions of §399.17 and §399.18.[11] TURN recognizes that the Commission must make determinations as to whether these utilities are covered by these provisions, and believes that such determinations should occur in the first phase.

Apart from this determination, the Commission should not address other unique requirements for these utilities until after the first phase is complete. Regardless of their status, all retail sellers will be subject to the same timetables, targets and banking rules. Any small and multi-jurisdictional utilities within the scope of §399.17 and §399.18 will be exempt from the renewable product limitations outlined in §399.16. No other critical issues need be resolved in the first phase to enable these utilities to begin near-term procurement activities. The impact of other exemptions in §399.17 should be addressed in a second phase.

TURN therefore urges the Commission to ensure that the first phase makes findings about which entities qualify under §399.17 and §399.18 and clarifies that this determination provides an exemption from the limitations in §399.16.

Respectfully submitted,

_____/S/_____

MATTHEW FREEDMAN
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: 415-929-8876 x304
matthew@turn.org

Dated: June 9, 2011

[11] Opening comments of BVES, page 4; Opening comments of CalPeco; Opening comments of Pacificorp, page 2.

VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 9, 2011, at San Francisco, California.

_____/S/_____

Matthew Freedman
Staff Attorney