

**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 11-05-005  
(Filed May 5, 2011)

**COMMENTS OF CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC (U 933-E)  
ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE  
REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Steven F. Greenwald  
Vidhya Prabhakaran  
Davis Wright Tremaine LLP  
Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: [vidhyaprabhakaran@dwt.com](mailto:vidhyaprabhakaran@dwt.com)

Attorneys for California Pacific Electric  
Company, LLC

August 30, 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.

Rulemaking 11-05-005  
(Filed May 5, 2011)

**COMMENTS OF CALIFORNIA PACIFIC ELECTRIC COMPANY, LLC (U933-E)  
ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE  
REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Pursuant to the Administrative Law Judge’s Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program issued on July 15, 2011 (“ALJ Ruling”), California Pacific Electric Company, LLC (U 933-E)<sup>1</sup> (“CalPeco”) submits these opening comments.

In determining new procurement targets and other compliance requirements for the Renewables Portfolio Standard (“RPS”) program for CalPeco, the Commission should recognize three characteristics that in combination distinguish CalPeco from the other California electric utilities:

1. CalPeco is in the NV Energy Balancing Authority and its power is imported from the East. Thus, CalPeco has no participation in or electronic interaction with the California Independent System Operator (“CAISO”).<sup>2</sup>
2. Prior to January 1, 2011, the California service territory which CalPeco now serves was part of the multi-state service territory of Sierra Pacific Power

---

<sup>1</sup> CalPeco also does business in California as “Liberty Energy-California Pacific Electric Company, LLC.”

<sup>2</sup> CalPeco owns and operates the 12 MW diesel-fueled Kings Beach Generation Station; however, its use is limited to maintaining local service in the Kings Beach/Incline Village communities during emergency periods in which transmission outages (typically weather-related) disrupt power deliveries from Nevada sources. The generation from Kings Beach is restricted by permits to no more than 1,440 MW annually. *See* D.10-10-017, mimeo at 20.

Company (“Sierra”). Thus, for RPS compliance purposes, the Commission classified Sierra as “multi-jurisdictional utility” (“MJU”). As now a California-only utility, CalPeco is not an MJU. However, the California Renewable Energy Resources Act legislation (“SB 2(1x)”) makes clear that CalPeco is subject to the RPS compliance rules prescribed in new Section 399.17. It is the successor to a utility that as of January 1, 2010 served less than 60,000 customers, is located outside of a California balancing authority, and receives almost all of its electric supply “from generating facilities located outside of California.”

3. The Commission has approved CalPeco’s five-year power purchase agreement with Sierra (“Sierra PPA”). The Sierra PPA obligates Sierra to supply CalPeco’s “full requirements” to serve CalPeco’s retail customers, including 20% from RPS-eligible renewable sources.<sup>3</sup>

Thus, CalPeco’s RPS procurement activities are dramatically different and more limited than the other California investor-owned utilities.

#### **I. CALPECO’S RPS COMPLIANCE IS SUBJECT TO SECTION 399.17**

CalPeco acquired ownership of Sierra’s former California assets and began providing utility service throughout its California service territory as of January 1, 2011.<sup>4</sup> As Sierra had provided utility service to electric customers in both Nevada and California, the Commission had designated Sierra as an MJU for purposes of compliance with the California RPS program.<sup>5</sup> By virtue of being Sierra’s successor, located in “a control area that is not under the operational balancing authority of the Independent System Operator or other California balancing authority and receiv[ing] the majority of its electrical requirements from generating facilities located

---

<sup>3</sup> D.10-10-017, mimeo at 20.

<sup>4</sup> The Commission approved the transfer of Sierra’s California electric distribution facilities in the Lake Tahoe area and the Kings Beach Generation Station to CalPeco in D.10-10-017.

<sup>5</sup> D.08-05-029, mimeo at 3, 6.

outside of California,” CalPeco falls squarely within the requirements of Section 399.17.<sup>6</sup> The Scoping Memo and Ruling of Assigned Commissioner acknowledged CalPeco’s status as a Section 399.17 utility<sup>7</sup>

## **II. CALPECO’S POWER PURCHASE AGREEMENT WITH SIERRA AND ITS PARTICIPATION IN THE NV ENERGY BALANCING AUTHORITY NARROW THE SCOPE OF AND FLEXIBILITY RELATING TO RPS COMPLIANCE**

The Commission has consistently recognized that the diversity among the electric utilities it regulates means that a “one-size-fits-all” approach is not appropriate with respect to establishing RPS compliance obligations. In D.03-06-071, the Commission accordingly designated Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”) (collectively the “Large Utilities”) in their own separate category for RPS program purposes. Then recognizing the substantial differences between these Large Utilities and the other California investor-owned utilities, in D.08-05-029, the Commission established for RPS purposes two additional categories of utilities: the “small utility” and the MJU. The Commission correspondingly developed different RPS obligations for these utilities that were designed to better reflect the smaller sizes, different supply procurement, and operating practices of the small and MJU utilities.

The Commission classified Bear Valley Electric Service (“BVES”) and Mountain Utilities, LLC (“MU”) as “small utilities” for RPS purposes (collectively, the “Small Utilities”). It also designated PacifiCorp and Sierra in the MJU category. Thus, the Commission should maintain its practice of recognizing the differences among the California regulated utilities in revising their respective RPS compliance obligations associated with SB 2(1x).

As previously explained, CalPeco purchases its “full requirements” for electric procurement through the Sierra PPA.<sup>8</sup> The Sierra PPA is structured to effectively preserve the

---

<sup>6</sup> Sections 399.17(a)(1)(b) and 399.17(a)(2).

<sup>7</sup> Scoping Memo and Ruling of Assigned Commissioner at 4 (July 8, 2011).

manner in which Sierra obtained power for its California customers — thus the Sierra PPA enables CalPeco to serve its California customers with power from the same East-of-California power sources, over the same lines, and at cost-based rates as under Sierra’s prior ownership.<sup>9</sup>

CalPeco cannot practically or cost-effectively obtain substantial amounts of power from any supply area other than from or through the Sierra system. No transmission facilities effectively connect CalPeco with the CAISO system and thus CalPeco cannot practically access supply sources from California, the Northwest, or the Southwest. Accordingly, as an integral part of its acquisition, CalPeco executed the Sierra PPA.

Recognizing the physical limitations on CalPeco’s independent ability to procure RPS-eligible power, the Sierra PPA obligates Sierra to include in the power it delivers to CalPeco 20% RPS-eligible power. Thus execution of the Sierra PPA constitutes CalPeco’s RPS procurement “portfolio” and similarly represents its RPS compliance for calendar years 2011, 2012, 2013, 2014 and 2015. Importantly, initially Sierra limited the term of the Sierra PPA to three years and the original agreement contains this relatively short term; however, in response to requests by Commission staff that CalPeco preserve this reliable supply of physical and RPS-eligible power, particularly at cost-based rates, for a longer period, CalPeco and Sierra agreed to amend the Sierra PPA and extend the term to five years.<sup>10</sup>

Additionally as an integral component of the renegotiation triggered by the Commission Staff’s strong recommendation that CalPeco extend the term of the cost-based Sierra PPA, Sierra and CalPeco executed a “commitment letter.” It obligates Sierra to offer to continue delivering CalPeco’s full requirements under a new power purchase agreement (for a new term of up to five

---

<sup>8</sup> See D.10-10-017, mimeo at 20 and 62 (Ordering Paragraph 1).

<sup>9</sup> See D.10-10-017, mimeo at 20.

<sup>10</sup> See *supra* fn 8.

years) with pricing importantly again based solely upon Sierra's system average costs.<sup>11</sup>

CalPeco is to provide Sierra notice by mid-2012 whether it will require Sierra to execute the new power purchase agreement and to specify the term (i.e., up to five years) for the new agreement. Any such second power purchase agreement with Sierra ("Sierra PPA2") will similarly obligate Sierra to provide CalPeco its "full requirements" to be able to deliver power to its customers; it is also expected that Sierra will continue to include RPS power in its portfolio at a level sufficient to enable CalPeco to satisfy its RPS requirements at the compliance percentage then in effect (as currently under the existing Sierra PPA).

It is possible, however, that Sierra could offer the most cost-competitive terms for such RPS power at percentage levels less than 25 percent; CalPeco believes that its customers would be best served, given its unique RPS circumstances, by allowing CalPeco the flexibility to execute Sierra PPA2 and obtain its full requirements of physical power and RPS compliance at a cost basis, even if the percentage of RPS power Sierra is able to offer is less than 25 percent.

CalPeco is not requesting that the Commission grant any such authority presently. Assuming CalPeco proceeds to exercise its rights to have Sierra execute the Sierra PPA2, Commission prior approval of Sierra PPA2 will be a condition precedent of the effectiveness of the agreement. CalPeco accordingly requests presently that it retain the opportunity in that pleading to request, if the facts and circumstances then existing justify such a request, for the Commission to: (i) authorize CalPeco to execute Sierra PPA2; and (ii) find that CalPeco may satisfy its RPS compliance requirements through its purchases pursuant to the Sierra PPA2, even if the RPS percentage in the Sierra PPA2 is less than 25 percent.

CalPeco's status as a Section 399.17 utility and its essentially one transaction power procurement/RPS compliance practices are substantially different from the multi-faceted and

---

<sup>11</sup> See Amendment No. 1 included within the Sierra PPA in *Application Re Transfer of Control*, A.09-10-028, Exhibit 10.

extremely diverse supply portfolios that the Large Utilities must employ to serve their respective loads. Given these substantial differences, the Commission should adopt RPS requirements for CalPeco which are consistent with the requirements of Section 399.17 and reflect the unique of its power procurement needs and practices.

With this as background, CalPeco provides these comments to some specific questions that the ALJ Ruling raises. For those questions which CalPeco has not provided a response, CalPeco reserves the right to comment in its reply comments.

### **III. CALPECO RESPONSE TO QUESTION #2**

The ALJ Ruling advances an initial proposed interpretation of Section 399.15(b)(2)(B). This “straw man” proposal construes the Section as requiring a yearly, *linear* progression from one mandated RPS percentage compliance target in the statute to the next mandated compliance target in the statute. Presumably, the imposition of such a yearly, linear progression is proposed to ensure that:

The [RPS MWh annual] quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016 and 33 percent of retail sales by December 31, 2020.<sup>12</sup>

Adoption of such annual linear RPS compliance targets would contravene both the legislation and RPS policy objectives. Foremost, setting compliance targets for the intervening years (*e.g.*, 21.5% for 2014 and 23.5% for 2015) is barred by Section 399.15(b)(2)(C). Its direction to the Commission could not be more explicit:

Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year [i.e. 2014].

The absence of any intervening year RPS target percentages in SB 2(1x), combined with the objective that retail sellers demonstrate “reasonable progress,” underscores the Legislature’s

---

<sup>12</sup> Section 399.15(b)(2)(B).

appropriate intent to avoid micro-managing the manner in which retail sellers progress to the 25% and 33% requirements. Moreover, imposition of increasing annual targets will necessarily increase the costs of RPS procurement and the compliance and associated administrative costs for both retail sellers and this Commission.

The Commission should deem that the retail seller has demonstrated “reasonable progress” in intervening years if at the end of a compliance period (*i.e.*, 2016 and 2020):

- 1) the retail seller has procured no less than the previous statutory procurement target during the intervening years, and
- 2) the retail seller has procured the statutory procurement target assigned to the end of the compliance period.

In other words, at the end of 2016, a retail seller that has procured RPS generation representing 20% of its retail sales in 2014 and 2015, and procured 25% by the end of 2016 should be deemed to have made “reasonable progress” during the intervening years.

#### **IV. CALPECO RESPONSE TO QUESTION #6**

Section 399.13(b) requires that:

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 a retail seller to enter into a contract of less than 10 years’ duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years’ duration.

The provision importantly allows the Commission some flexibility; it does not dictate that the Commission establish the same minimum quantity of resources procured through contracts of at least 10 years’ duration for all retail sellers. With respect to CalPeco’s particular circumstances, including its status as a Section 399.17 utility, the Commission should not impose any minimum quantity of resources to be procured through contracts of at least 10 years’ duration.



First, CalPeco is currently satisfying all of its RPS requirements through its purchases from Sierra under the Commission-approved five-year Sierra PPA. Arbitrary imposition of a “one-size-fits-all” obligation that all retail sellers, regardless of circumstances, execute supply contracts with terms of at least 10 years would require CalPeco to seek to amend the Sierra PPA (i.e., in return for Sierra being obligated to supply CalPeco’s “full requirements,” CalPeco is obligated to purchase its “full requirements” from Sierra) and procure some portion of its RPS power under a 10-year power purchase agreement. The resulting consequences would be the incurrence of unnecessary transaction costs to amend the Sierra PPA and undoubtedly purchasing some power, physical and RPS, at prices higher than the cost-of-service pricing available under the Sierra PPA.

Moreover, given the relatively small size of CalPeco’s retail load and associated procurement responsibilities, maintaining the ability to procure RPS power without any arbitrary constraints, will best preserve for CalPeco the necessary flexibility to obtain the best price and terms for its limited RPS procurement. If a Section 399.17 utility, such as CalPeco, is able to procure any necessary, incremental RPS procurement at cost-effective prices through contracts with terms less than 10 years, there is no reason to impose the 10-year contract term obligation.

The Commission adopted the requirement for a minimum quantity from RPS long-term contracts with the policy objective that retail sellers make available contracts of a length sufficient to facilitate the development, financing and construction of new renewable resources.<sup>13</sup> This objective can be appropriately achieved by limiting this requirement to the Large IOUs. They each have large renewable portfolio requirements and require larger scale and new RPS projects to satisfy their RPS MWh compliance requirements. The Large Utilities need a diverse portfolio and thus have the ability to integrate long-term contracts into their RPS portfolios. Imposition of a separate RPS compliance requirement to enter long-term contracts does not

---

<sup>13</sup> D.07-05-028, mimeo at 4-5.

impinge upon their overall procurement flexibility or their ability to procure RPS power at the best available prices.

In contrast, imposing a 10 year contract requirement on CalPeco will not enhance the desired development and financing of new RPS projects. Moreover, such a requirement will have adverse impacts. Reasoning which works in the context of the Large Utilities RPS targets in the tens of millions of MWh annually simply does not work with RPS targets orders of magnitude lower. The total RPS procurement of CalPeco, even when combined with Bear Valley and PacifiCorp, is simply not a consequential amount to have a meaningful impact on the development of new renewable resources.

Accordingly the Commission should refrain from imposing any requirement on CalPeco to enter RPS contracts longer than 10 years.<sup>14</sup> However, if the Commission were to impose any such requirement, in all events, it must allow each RPS MWh which CalPeco procures pursuant to the Sierra PPA to count fully towards CalPeco's RPS compliance. As described earlier, the Commission authorized CalPeco to enter the five-year Sierra PPA for purposes of both providing CalPeco with its full requirements to serve its retail load and with sufficient RPS eligible to meet its current 20% RPS obligations.

The Commission's approval of the Sierra PPA was an absolute critical component of its approval of the transaction. The Sierra PPA affords CalPeco's electric consumers the desired seamless transition from Sierra to CalPeco ownership and ensures that CalPeco could procure at cost-based rates sufficient power to serve its retail load and sufficient RPS power to satisfy its RPS requirements. Imposing a requirement on CalPeco to abandon or renegotiate the Sierra PPA for purposes of procuring an amount of RPS power through longer term contracts would

---

<sup>14</sup> Alternatively, if the Commission believes that Section 399.13(b) requires the setting of some "minimum" quantity of long term contracts, the Commission should set CalPeco's minimum percentage quantity at zero percent. The Commission should also for purposes of any possible "long term contract" obligation it would impose on CalPeco consider the combination of the current Sierra PPA and CalPeco's ability to procure RPS power through the Sierra PPA2 for an additional five years as constituting de facto a long term contract sufficient to satisfy Section 399.13(b).

impermissibly vitiate the Commission's approval of the Sierra PPA, engender unnecessary regulatory uncertainty, and likely increase procurement costs – all to the detriment of the CalPeco electric consumer.

#### **V. CALPECO RESPONSE TO QUESTION #16**

The Commission should limit any penalty for a retail seller failing to satisfy its RPS MWh percentage procurement target to only the end of each compliance period (*i.e.*, average of 20% for 2011-2013; reaching 25% at the end of 2016, and reaching 33% by the end of 2020). The legislation intends to increase RPS production over the long term, and thus establishes targets at the end of each compliance period; imposition of penalties for intervening years would counter that objective and provide retail sellers the contrary incentive to sacrifice the important longer-term RPS goals to avoid a penalty in a particular year.

Any attempt by the Commission to impose penalties based on performance in a year other than 2013, 2016 or 2020 would further violate the Legislature's imperative that retail sellers "shall not be required to demonstrate a specific quantity of performance for any individual intervening year."<sup>15</sup>

The Commission should also retain its practice of setting a penalty cap. The cap should cover the compliance period. Importantly, the Commission must set the RPS penalty cap based on the particulars of the retail seller. For instance, adoption of the current \$25 million cap for CalPeco would be illusory.<sup>16</sup>

#### **CALPECO RESPONSE TO QUESTION #17**

The Commission's current annual compliance reports can be modified to verify compliance at the end of each compliance period. A slightly modified annual compliance report

---

<sup>15</sup> Section 399.15(b)(2)(C); *see also supra* Section III.

<sup>16</sup> Assuming CalPeco had an obligation to procure 219,000 MWh during a year (25 MW x 8,760 hours), and it failed to procure a single RPS MWh, its penalty at \$50/MWh would be under \$11 million – well below the \$25 million penalty cap and rendering such a cap meaningless to CalPeco.

can show that a retail seller has procured no less than the previous statutory procurement target during the intervening years, and that the retail seller has procured the statutory procurement target assigned to the end of the compliance period.

Respectfully submitted,

/s/

---

Steven F. Greenwald  
Vidhya Prabhakaran  
Davis Wright Tremaine LLP, Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: [vidhyaprabhakaran@dwt.com](mailto:vidhyaprabhakaran@dwt.com)

Attorneys for California Pacific Electric  
Company, LLC

Dated: August 30, 2011

