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 MARIN ENERGY AUTHORITY ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. INTRODUCTION AND SUMMARY

In accordance with the schedule contained in the Administrative Law Judge's Ruling Requesting Comments on Implementation of the New Portfolio Content Categories for the Renewables Portfolio Standard Program, dated July 12, 2011 ("July 12 Ruling"), the Marin Energy Authority ("MEA") respectfully submits to the California Public Utilities Commission ("Commission") the following comments on the July 12 Ruling regarding implementation of the Renewables Portfolio Standard ("RPS") directives included in Senate Bill ("SB") 2 (1x) (2011).

MEA is the first community choice aggregator ("CCA") in California and has the objective of dramatically increasing the use of renewable and greenhouse-gas free electricity in its service territory. In 2010, MEA achieved 26.9% RPS-qualifying energy[1] in its resource mix and within the past eight months has entered into three long-term power purchase agreements – a large number for an entity of MEA's size – with in-development, in-state RPS-eligible facilities. The comments set forth below reflect MEA's strong interest in having a reasonable and measured transition to the new SB 2 (1x) rules and creating a regulatory environment which

[1] Marin Energy Authority August 2011 Semi-Annual Compliance Report Pursuant to the California Renewables Portfolio Standard, as submitted to the Commission on July 26, 2011.

creates certainty for all load -serving entities ("LSEs"), incentivizes RPS procurement, and recognizes RPS procurement efforts under the pre- SB 2 (1x) rules.

II. RESPONSES TO QUESTIONS POSED IN JULY 12 RULING

As directed in the July 12 Ruling, MEA offers its responses to various questions posed therein. At this time, MEA has no comment on the following questions: 1 through 16, 18 , 19, 21, and 23.

A. QUESTION 17

Section 399.16(d) provides that:
"Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if [certain] conditions are met…"

- **How should the phrase "ownership agreement" be interpreted in this context? Please provide relevant examples.**
- **How should the phrase "count in full" be interpreted? Include consideration of:**
  a) **The requirements in D.07-05-028 (implementing current § 399.14(b)) that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;**
  b) **The requirement in new § 399.13(b) for minimum procurement from contracts of at least 10 years' duration;**
  c) **The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years' duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods.**

MEA directs is response specifically to the new California Public Utilities Code ("PU Code") Section 399.16(d) provision that pre -June 1, 2010 contracts or ownership agreements should "count in full" towards the procurement requirements. We will call these contracts and ownership agreements "Pre-Qualifying RPS." So, for example, if an entity is required to procure

20% RPS-eligible energy, and that entity has Pre-Qualifying RPS equal to 15% of that entity's retail energy sales, only the remaining RPS-eligible procurement obligations (5% in this example) would be subject to the "bucket" determinations set forth in new PU Code Section 399.16.

1. "Minimum Quantity" Rules

In conjunction with determining what qualifies as Pre-Qualifying RPS, the Commission must determine when the rules set forth in Decision ("D.") 07-05-028 are replaced with the rules set forth in new PU Code Section 399.13(b).

Under the rules set forth in D.07-05-028, in order for a LSE:

> to be able to count for any RPS compliance purpose energy deliveries from contracts of less than 10 years' duration ("short-term") with RPS-eligible facilities that commenced commercial operation prior to January 1, 2005 ("existing facilities"), in each calendar year enter into contracts of at least 10 years' duration ("long-term") and/or short-term contracts with facilities that commenced commercial operation on or after January 1, 2005 ("new facilities") for energy deliveries equivalent to at least 0.25% of that LSE's prior year's retail sales (the "minimum quantity"). (D.07-05-028 at 33.)

D.07-05-028 also (i) allowed carry-forwards of amounts in excess of the minimum quantity requirement, (ii) allowed repackaged compliant underlying contracts to be compliant, (iii) eliminated the minimum quantity requirement when the LSE reaches the RPS goal, and (iv) in the case of new LSEs, applied the minimum quantity requirements beginning in that LSE's second year of operations. (D.07-05-028 at 34.)

New PU Code Section 399.13(b), on the other hand, addresses only a minimum requirement for contracts of 10 years or longer – and does not reference contracts of any duration with new facilities – in order for shorter-term contracts to be counted as RPS eligible. The new Code Section also does not contain the specific provisions included in D.07-05-028 mentioned above.

As further discussed in MEA's response to Question 24 below, new PU Code Section 399.13(b) should not be implemented until the January 1 following implementation of the new RPS Eligibility Guidebook, as amended by the California Energy Commission ("CEC") to reflect SB 2 (1x) ("New RPS Eligibility Guidebook"). SB 2 (1x) does not specify a start-date for new PU Code Section 399.13(b), so the Commission has considerable leeway in determining when, and on what terms, it should begin to apply. Notwithstanding its passage date in early 2011, SB 2 (1x) retroactively applies certain rules to a June 1, 2010 compliance date. It is essential in this circumstance that LSEs and their respective customers are not subjected to supplementary procurement obligations and associated costs despite complying with then-existing and continuing Commission rules and orders. It is the Commission's obligation to ensure a fair transition to the new SB 2 (1x) rules.

For this reason, MEA recommends:

First, any transition to a new "minimum quantity" methodology should occur at a year-end since those calculations are performed on a calendar-year basis. For example, if a LSE had entered into a short-term RPS-compliant contract under the old rules prior to June 1, 2010, and 1) at the end of 2010 entered into a long-term contract or a contract with a new facility, pursuant to the D.07-05-028 rules; or 2) the aforementioned short-term RPS-compliant contract specified energy deliveries from "new facilities", then, in either case, the pre-June 1, 2010 contract should be considered a Pre-Qualifying Contract.

Second, any surplus "minimum quantities" under the old methodology should be rolled over into the new methodology. That is, LSEs should not start from scratch if they have been surpassing Commission requirements; any accrued or "banked" surplus "minimum quantities" should be applicable to an LSE's RPS obligations in future compliance periods.

Third, since the new "minimum quantity" requirements are more restrictive since they do not allow contracts with new facilities to count towards the "minimum quantity," the new "minimum quantity" level should be revisited and perhaps lowered.

Fourth, clarifying rules will need to be prepared in an equivalent manner to the old "minimum quantity" rules under D.07-05-028 that apply to new PU Code Section 399.13(b). These should include: (i) allowances for carry-forwards of amounts in excess of the new minimum quantity requirement, (ii) allowances for repackaged compliant underlying contracts to be compliant, (iii) an elimination of the minimum quantity requirement when a LSE reaches the specified RPS requirement, and (iv) in the case of new LSEs, applying the minimum quantity requirements beginning in that LSE's second year of operations.

2. Carry-Forward of Pre-Qualifying RPS Energy

With regards to the restrictions set forth in new PU Code Section 399.13(a)(4)(B) addressing excess procurement, all Pre-Qualifying RPS should be grandfathered and allowed to be carried forward. In the case of Pre-Qualifying RPS, these contracts and agreements were entered into in good faith and prior to the existence of SB 2 (1x), and LSEs should be properly credited for working to achieve or exceed Commission mandates and to accomplish state RPS objectives. The LSEs should also have the ability to choose which carry-forwards they can use in future years, whether carried-forward "bucket" RPS energy or carried-forward Pre-Qualifying RPS – either designation should be treated equivalently for compliance purposes with Pre-Qualifying RPS satisfying any and all of the identified "bucket" procurement obligations.

B. QUESTION 20

SB 2 (1x) amends Pub. Res. Code § 25741 to, among other things, eliminate the current requirement that RPS-eligible energy must be "delivered" to end-use retail customers in California. The requirement for delivery is implemented by the CEC in its *Renewables Portfolio Standard Eligibility Guidebook (RPS Eligibility*

***Guidebook)* (3d ed. December 19, 2007). It is also incorporated into the characterization of a REC in D.08-08-028.**

- **At what point in time should the Commission consider the "delivery" requirement ended (e.g., on the effective date of SB 2 (1x); or as of January 1, 2011; or on the effective date of the CEC's revisions to the *RPS Eligibility Guidebook* reflecting the repeal)?**
- **Does the "delivery" requirement end at that time for generation under RPS contracts of utilities that were already approved by the Commission? Only for generation under contracts signed by utilities after the end of the delivery requirement?**
- **How should the plan you propose be applied to ESPs? to CCAs?**

MEA supports eliminating the "delivered" requirement on the January 1 following implementation of the New RPS Eligibility Guidebook (the "Delivery End Date"). Tying the repeal of the delivery requirements to the effective date of RPS Eligibility Guidebook revisions will ensure that all LSEs continue to operate within a known framework before transition occurs and will allow LSEs to diligently prepare for this transition. This recommendation will also allow sufficient time, without a specific deadline, for the CEC to develop thoughtful, comprehensive and clearly-articulated revisions to the RPS Eligibility Guidebook before subjecting jurisdictional entities to new obligations and guidelines. Furthermore, a January 1 effective date will synchronize reporting cycles, which have historically focused on full calendar years, with the effective date of related reporting guidelines. Finally, by creating certainty in the Delivery End Date, all LSEs will be able to ensure that their procurement complies with the final rules decided upon by the Commission and the CEC. Such a process would embody sound planning principles that will provide market participants with clearly defined rules before such rules must be followed.

In the case of community choice aggregators ("CCAs") specifically, MEA believes the delivery rules should apply to all contracts or ownership agreements entered into on or before the Delivery End Date. MEA takes no position on how the delivery requirements are applied to

investor-owned utilities ("IOUs") and energy service providers ("ESPs") , however MEA notes that it is important to provide all LSEs with certainty and advance notice of the rules.

C. QUESTION 22

Is any post-contracting verification of the portfolio content category needed to track and determine compliance with RPS procurement obligations for utilities? for ESPs? for CCAs? If yes, is the CEC responsible for undertaking it? is this Commission?

- **What information would be required for such verification?**
- **Would any changes be needed to WREGIS to accommodate your proposal?**

MEA believes that no post -contracting verification of the portfolio content category is needed beyond any minor modifications of current annual and semi -annual reporting requirements currently in place, and minor modification to the WREGIS system. Such revisions to the WREGIS reporting framework may include flagging facilities as (i) Pre-Qualifying RPS; or (ii) as one of the specific RPS categories or "buckets" set forth in new PU Code Section 399.16. To accommodate these changes, the Commission and CEC may choose to consider incorporating subtle enhancements to the existing RPS certification process and WREGIS registration process for renewable generators. Such revisions to the WREGIS reporting framework may include the development of transactional designations for each REC that will ensure transparency during RPS reporting, minimize verification efforts and facilitate reviews by oversight agencies. ~~Such changes would specify the appropriate RPS category or "bucket" applicable to each renewable generator at the time of certification (or re certification); this information could then be conveyed to WREGIS at the time of generator registration. Once such information is reflected in the WREGIS system, any subsequent REC transfers from these generators would occur with accurate, clearly marked RPS eligibility designations, facilitating report compilation and interpretation.~~

MEA is a very small LSE and h as a strong interest in ensuring that there is no dramatic increase in administrative burdens related to RPS compliance beyond the current satisfactory requirements. Any reporting changes emanating from the implementation of SB 2 (1x) requirements should attempt to streamline related processes and minimize the administrative burdens imposed on jurisdictional entities as well as regulators/oversight agencies.

D. QUESTION 24

The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid- October 2011, at the earliest, and the end of 2011, at the latest. Please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?

MEA recommends implementing the pre-SB 2 (1x) RPS rules, where possible, until the January 1 following the finaliz ation of the New RPS Eligibility Guidebook. One of the key factors in the successful and seamless roll -out of the new RPS rules will be certainty for the LSEs which need to comply with the rules. This is best achieved by setting fixed and final rules in the New RPS Eligibility Guidebook prior to the effectiveness of the new RPS rules. The new rules should have the objective of incentivizing RPS procurement under the new SB 2 (1x) rules and recognizing RPS procurement efforts under the pre - SB 2 (1x) rule s. Implementation of the new rules should focus on these objectives while minimizing potential confusion and administrative burdens associated with this transition.

III. CONCLUSION

MEA thanks the Commission , Assigned Administrative Law Judge Simon and Assigned Commissioner Ferron for their consideration of these comments.

Respectfully submitted,

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