

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

Order Instituting Rulemaking to Continue)	
Implementation and Administration of California)	Rulemaking 11-05-005
Renewables Portfolio Standard Program.)	(Filed May 5, 2011)
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**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING COMMENTS ON NEW PROCUREMENT TARGETS
AND CERTAIN COMPLIANCE REQUIREMENTS FOR
THE RENEWABLE PROCUREMENT PROGRAM**

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August 30, 2011

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In accordance with the *Administrative Law Judge’s Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewable Procurement Program* (“ALJ Ruling”), dated July 15, 2011, the California Municipal Utilities Association (“CMUA”) respectfully submits these comments on behalf of its members.

Most of the questions posed in the ALJ Ruling address implementation issues specific to retail sellers subject to the Commission’s jurisdiction. Consistent with its statements in prior pleadings, CMUA will not opine upon how the Commission-directed rules to implement SB 2 (1X) apply to retail sellers. In general, CMUA’s interests arise when publicly-owned utility (“POU”) programs are directly affected or when the statute requires that the POU-directed programs be “consistent with,” or “comparable to” the Commission-directed rules.

The fact that CMUA has not addressed certain issues raised in the ALJ Ruling should not be construed as a CMUA position on those issues, and CMUA reserves the right to address relevant issues in reply comments, as appropriate.

Question 15: New Section 399.31 provides for the procurement of RECs for RPS compliance from local publicly owned utilities (POUs) by retail sellers, under certain conditions. It provides:

A retail seller may procure renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, for purposes of compliance with renewable portfolio standard requirements, if both the following conditions are met:

(a) The local publicly owned electric utility has adopted and implemented a renewable energy resources procurement plan that complies with the renewable portfolio standards adopted pursuant to Section 399.30.

(b) The local publicly owned electric utility is procuring sufficient eligible renewable energy resources to satisfy the target standard, and will not fail to satisfy the target standard in the event that the renewable energy credit is sold to the retail seller.

- What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(a)?
- What documentation should the Commission require from ESPs? From CCAs?
- What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(b)?
- What documentation should the Commission require from ESPs? From CCAs?
- In view of the CEC's oversight of POU's compliance with RPS requirements under SB 2(1X), how should this Commission coordinate with the CEC to administer and verify your proposed system of documentation?

CMUA believes this inquiry is premature, and overcomplicates any inquiry that may ultimately be necessary.

First, regulations to implement and enforce POU RPS programs are under development at both POU governing boards, and the California Energy Commission ("CEC"). The nature and form of reporting has yet to be determined in large part. There is no pressing need for the

Commission to accelerate consideration of how procurement of POU renewable energy credits (“REC”) by retail sellers will fit into retail seller compliance programs.

In that regard, California Public Utilities Code section 399.25(d)¹ clearly provides that the CEC, not the Commission, has the authority to certify the eligibility of renewable energy credits from POUs. At this point, it is unclear whether any additional documentation beyond that CEC certification will be required.

Second, most data regarding POU renewable procurement is publicly available information. Specific to the RPS, subdivisions (e), (f), and (g) of section 399.30 require: (1) that enforcement plans be publicly adopted by January 1, 2012²; (2) that future deliberations of POU boards on RPS matters be publicly noticed³; (3) that reports to the CEC be generated by each POU⁴; and (4) that such information be linked on the CEC website.⁵

At this early stage, it is unclear what additional measures would be needed. CMUA urges the Commission to allow POU regulations to develop before considering action on this issue.

Question 16: In D.03-06-071 and D.03-12-065, the Commission set the basic parameters for enforcement of RPS obligations. Among other things, the Commission set a penalty amount for retail sellers failing to meet their annual RPS obligations at \$0.05/kilowatt-hour (kWh) for each kWh below the annual procurement target, with an annual cap of \$25,000,000. New § 399.15(b)(2) institutes two three-year compliance periods and one four-year compliance period. New § 399.15(b)(1)(C) specifies that retail sellers "shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."

- To what obligation should a penalty apply?

¹ Unless otherwise noted, all code sections reference the California Public Utilities Code.

² Cal. Pub. Util. Code § 399.30(e).

³ *Id.* § 399.30(f)(1).

⁴ *Id.* §§ 399.30(f)(3), 399.30(g).

⁵ *Id.* § 399.30(f)(3).

- the goal at the end of each compliance period (i.e., average of 20% for 2011-2013; 25% by the end of 2016; 33% by the end of 2020);
 - the compliance period quantity for a particular compliance period;
 - both of the above;
 - another metric or quantity. Please set out the proposal in detail and explain its basis.
- Should the penalty amount of \$0.05/kWh be changed? If so, what method should be used to set a new penalty amount?
 - For compliance periods beginning in 2011, should a penalty cap be in place?
 - If a penalty cap is imposed, should it cover an entire compliance period?
 - What method should be used to set a new penalty cap under SB 2 (1x)?

CMUA's interest in this question is tied to the relationship between the Commission's development of enforcement and penalty policies related to the IOUs, and the imposition of penalties for POU non-compliance by the California Air Resources Board ("CARB"). Sections 399.30(n) and 399.30(o) give exclusive jurisdiction to CARB to determine the appropriate penalty for a POU's failure to comply with the CEC's RPS regulations. However, section 399.30(o) states that "any penalties imposed [by CARB] shall be comparable to those adopted by the commission for noncompliance by retail sellers." Due to this potential linkage between the Commission's penalty provisions for IOUs and CARB's provisions for POUs, CMUA offers the following suggested guiding principles for penalty calculations under the RPS program:

- Proposed penalties should be commensurate with the severity of the infraction;
- Penalties should apply only to end of compliance period targets;
- A grace period for correcting technical violations should be established;
- Alternative and flexible compliance mechanisms rather than direct financial penalties are appropriate;
- Penalty formulations must be consistent, progressive, predictable, and fair for the various types of violations (e.g., late reports, section 399.16 (b)(1) criteria, or

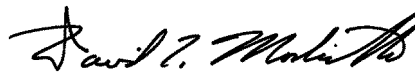
failure to achieve RPS compliance period targets), and may take into account the impact on the complying entity;

- Violations and proposed penalties should not be retroactive prior to the adoption of regulations developed pursuant to SB 2 (1X);
- Penalty caps should be established for each type of violation;
- A utility cannot be penalized for the same infraction under more than one provision of state law; and
- A formal appeal process should be established.

CMUA suggests these guiding principles for establishment of an equitable penalty regime.

Dated: August 30, 2011

Respectfully submitted,



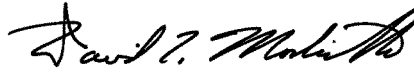
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VERIFICATION

I am an officer of the California Municipal Utilities Association, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

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

Executed on August 30, 2011 at Sacramento, California.

A handwritten signature in black ink, appearing to read "Dave Modisette". The signature is written in a cursive style with a large initial "D".

Dave Modisette
Executive Director