

**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
NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS
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 New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program, dated July 15, 2011 (“July 15 Ruling”), the Marin Energy Authority (“MEA”) respectfully submits to the California Public Utilities Commission (“Commission”) the following comments on the July 15 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 energy¹ 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

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.

measured transition to the new SB 2 (1x) rules and creating a regulatory environment which 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 15 RULING

As directed in the July 15 Ruling, MEA offers its responses to various questions posed therein. At this time, MEA has no comment on the following questions: 1 through 5, 9 through 14, and 17 through 18.

A. QUESTION 6

New § 399.13(b) amends current § 399.14(b) as indicated below (underlines show additions; strikeouts show deletions):

(b) 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 either through contracts of at least 10 years’ duration or from new facilities commencing commercial operations on or after January 1, 2005.

In D. 07-05-028, the Commission implemented current § 399.14(b) by requiring that retail sellers enter into contracts for a minimum quantity of 0.25% of the prior year’s retail sales that have a minimum duration of 10 years (long -term contracts), or are with RPS -eligible generation facilities commencing commercial operation on or after January 1, 2005. This obligation ends when a retail seller reaches the goal of 20% of retail sales obtained from eligible renewable resources. (D.07-05-028, OP 5.)

- How should the Commission determine the minimum quantity under new § 399.13(b)? Please provide a sample calculation using the proposed method.**

MEA directs its response specifically to the new California Public Utilities Code (“PU Code”) Section 399.13(b) which alters the “minimum quantity” rules. To determine how the “minimum quantity” is calculated, MEA believes that all contracts and ownership agreements entered into prior to the implementation of SB 2 (1x) rules – a future date to be determined –

should be considered “Pre-Qualifying RPS” provided that those contracts met the pre -SB 2 (1x) rules. Amounts attributable to Pre-Qualifying RPS should be allowed to carry forward under the new rules as discussed below.

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 19 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 (a) 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 (b) the 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 “m inimum quantities” should be applicable to an LSE’s RPS obligations in future compliance periods. This includes all contracts or ownership arrangements that were for new facilities or were for long-term contracts.

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.

- **Should the minimum quantity include specific minimum quantities of procurement from long-term contracts in any or all of the portfolio content categories identified in new § 399.16(b)?**

The minimum quantity should not need to include procurement from long-term content categories identified in new § 399.16(b). SB 2 (1x) has created significant complexity in the treatment of RPS, and MEA recommends retaining as much administrative and regulatory simplicity in the rules that have not been proscribed by the legislation.

- **Should the minimum quantity requirement under new § 399.13(b) carry forward the requirement in D.07 -05-028 that the long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts sought to be counted for RPS compliance? If not, what basis for accounting for the minimum quantity of long-term contracts should be used?**

As discussed above, the clarifying rules in D. 07-05-028 should be applied to the new SB 2 (1x). This should include allowances for carry -forwards of amounts in excess of the new minimum quantity requirement. This flexibility is particularly important for small entities such

as MEA which may not enter into new contracts on an annual basis, but may take a larger RPS “bite” off in one year, and carry forward the excess in future years.

- **Should the minimum quantity requirement under new § 399.13(b) have a termination? If so, what should the termination be?**

Yes. As discussed above, the minimum requirement should be eliminated when a LSE reaches the specified RPS requirement and should not be reinstated for that LSE as long as compliance is sustained. If a LSE has surpassed the RPS requirements, that entity is furthering and supporting the objectives of the RPS program and by eliminating this requirement when a LSE meets the requirements incentivizes the LSE to exceed the requirements.

As MEA is one of only three entities that have fully complied with California’s 20% RPS during the 2010 compliance period and has plans to significantly exceed such standards in future compliance periods, as represented in MEA’s semi-annual RPS Compliance Report to the Commission (August 2011), MEA is particularly interested in providing appropriate incentives to promote RPS achievement for additional LSEs. Eliminating the minimum quantity requirement for RPS-compliant LSEs would provide such an incentive without compromising overarching objectives of the RPS program. With this in mind, MEA reiterates its interest in eliminating the minimum quantity requirement when a LSE reaches and sustains compliance with the specified RPS requirement.

- **How should deliveries in 2011 and later years from short-term contracts entered into in 2010 and earlier years, and in compliance with D.07-05-028, be treated?**

These deliveries should be treated as Pre-Qualifying RPS and should be allowed to be utilized and carried forward. For example, if an entity entered into a short term contract for RPS energy from new facilities, energy from that contract would be deemed Pre-Qualifying RPS. If they have excess Pre-Qualifying RPS to carry forward, they may enter into short-term RPS

contracts until such carry -forward has been depleted, at which point the LSE would be required to enter into the minimum quantity of long -term RPS contracts or ownership arrangements, unless another exception applied (e.g. the LSE has achieved or exceeded the minimum RPS for the year).

- **Should such deliveries be deducted from actual procurement quantities as part of the calculation of excess procurement that may be applied to a subsequent compliance period pursuant to new § 399.13(a)(4)(B)?**

MEA has no comment on this question at this time.

- **Should short-term contracts entered into in 2011 but prior to the effective date of SB 2 (1x) be treated differently? Why or why not?**

No. These contracts should not be treated differently than as discussed above until there are final rules in place implementing the new SB 2 (1x) rules. By taking this approach, entities will be provided regulatory certainty and will not be punished for complying with, in good faith, the past RPS rules.

B. QUESTION 7; QUESTION 8

In response to questions regarding banking rules. [Full text of questions omitted.]

With regards to banking rules, MEA does not, at this time, make a recommendation regarding the banking methodology. However, MEA notes that any new methodology for determining excess procurement and banking should allow for the use of Pre -Qualifying RPS, such as grandfathered short-term contracts, in the excess procurement equation.

C. QUESTION 15

In response to questions regarding renewable energy credits (RECs) from publicly owned utilities (POUs) by retail sellers. [Full text of question omitted.]

With respect to the documentation required for the purchase of RECs from POUs, the Commission should seek to develop uniform disclosure requirements that minimize

administrative burdens, including tracking and reporting; any reporting requirements developed by the Commission should be applied equally and consistently to all LSEs.

D. QUESTION 19

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. In light of this, 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 finalization 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 – through Commission decisions and 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) rules. 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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