

**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)

**OPENING COMMENTS OF PACIFICORP (U 901 E) AND BEAR VALLEY ELECTRIC  
SERVICE, A DIVISION OF GOLDEN STATE WATER COMPANY (U 913-E) ON  
PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES  
FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

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Pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure and the October 7, 2011, Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program (Proposed Decision), PacifiCorp (U-901-E), d.b.a. Pacific Power (PacifiCorp or Company) and Bear Valley Electric Service (BVES), a division of Golden State Water Company (U913-E), hereby provides these comments on the Proposed Decision.

**I. Introduction and Summary.**

PacifiCorp is a multi-jurisdictional electric utility (MJU) with approximately 1.7 million customers in California, Idaho, Oregon, Utah, Washington and Wyoming. Approximately 45,000 of those customers are located in Shasta, Modoc, Siskiyou and Del Norte counties in Northern California, representing less than two percent of the total retail load served across PacifiCorp's six-state system. PacifiCorp's California service territory is not connected to the California Independent System Operator (CAISO), but rather PacifiCorp is the balancing authority for its California service territory, which is operated on an integrated basis with other states in the western portion of its multi-state territory.

BVES is a small electric utility in the Big Bear recreational area of the San Bernardino mountains that provides electric distribution service to approximately 21,500 residential customers in a resort community with a mix of approximately 40% full-time and 60% part-time residents. Its service area also includes about 1,400 commercial, industrial and public-authority customers, including two ski resorts. BVES' service territory is connected to the CAISO via Southern California Edison under a Wholesale Distribution Access Tariff (WDAT). The Commission recognizes small and multi-jurisdictional utilities as SMJUs.

PacifiCorp, as an MJU, is also subject to somewhat different renewables portfolio standard (RPS) requirements as provided in new Section 399.17 of Senate Bill No. 2 of the California Legislature's 2011 First Extraordinary Session (SB 2 (1x)).<sup>1</sup> Similarly, BVES, as a small utility, is subject to slightly different RPS requirements as provided in Section 399.18 of SB 2 (1x). Pursuant to new Sections 399.17 and 399.18, PacifiCorp and BVES are not subject to the limitations on the use of procurement in each portfolio content category established by new Section 399.16. In general, PacifiCorp and BVES support the Proposed Decision's interpretation of this exception. However, PacifiCorp and BVES seek clarification with respect to the interpretation of new Sections 399.17 and 399.18 and what, if any, requirements set forth in new Section 399.16 apply to PacifiCorp and BVES. Additionally, PacifiCorp and BVES request that the Commission modify the Proposed Decision to more accurately reflect the statutory language of new Section 399.16(b)(3) for the third portfolio content category.

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<sup>1</sup> Senate Bill (SB) 2 (1x), Stats. 2011, ch. 1 (Gov't Code § 9600(a)). SB 2 (1x) will be effective on December 10, 2011.

**II. The Proposed Decision Should Further Clarify How the Commission Interprets the Language of Sections 399.17 and 399.18 of SB 2 (1x) Stating that Small and Multi-Jurisdictional Utilities are Not Subject to Procurement Content Limitations.**

PacifiCorp, as an MJU with fewer than 60,000 customer accounts in California, and BVES, as a small utility with 30,000 or fewer customers, are not subject to the limitations on the use of procurement in each portfolio content category pursuant to new Public Utilities Code Sections 399.17(b) and 399.18(b).<sup>2</sup> The Proposed Decision affirms this point.<sup>3</sup> However, the Proposed Decision goes on to state that “this exemption does not, however, affect the portfolio content category itself of SMJUs’ RPS procurement transactions.”<sup>4</sup> The Proposed Decision additionally provides:

Thus, if a small utility buys unbundled RECs, those unbundled RECs are subject to the rules for that portfolio content category; but when the small utility retires those RECs for RPS compliance, it may use them without regard to the limitations in § 399.16(c)(2).<sup>5</sup>

PacifiCorp and BVES believe this language is unclear and should be revised to more closely resemble the language in Ordering Paragraph 13, which provides as follows:

The procurement of small and multi-jurisdictional utilities should count for compliance with the California renewables portfolio standard without regard to the limitations on the use of each portfolio content category established by Pub. Util. Code § 399.16(c), as effective December 10, 2011, so long as all other procurement requirements for compliance with the California renewables portfolio standard are also met.

New Sections 399.17 and 399.18, as well as the “Scoping Memo’s uncontested ruling,”<sup>6</sup> clearly provide an exemption from the portfolio content category limitations. Pursuant to this

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<sup>2</sup> Unless otherwise noted, all further references to sections are to the Public Utilities Code.

<sup>3</sup> Proposed Decision, p. 53.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 53-54.

<sup>6</sup> *Id.* at 53.

clear directive, the Commission should modify the Proposed Decision to exempt BVES and PacifiCorp from any portfolio content category usage limitations, as it did in the Ordering Paragraph. The language in Ordering Paragraph 13 provides greater clarity and should be used by the Commission in lieu of the language on pages 53-54 of the Proposed Decision. If the language in the Proposed Decision is not modified, PacifiCorp and BVES request clarification about what the Commission means when it states that an SMJU is “subject to the rules for that portfolio content category.”<sup>7</sup> The language appears to be an indication that the exemptions found in Sections 399.17 and 399.18 are limited to certain pieces or subdivisions of Section 399.16, presumably those that set forth “any procurement content limitation.” PacifiCorp and BVES request confirmation that they are not subject to any procurement content category limitations and seek further clarification and specificity as to any subdivisions of Section 399.16 that do apply to PacifiCorp and BVES. If, for example, the Commission determines that PacifiCorp or BVES is required to make an upfront showing related to the categorization for each procurement transaction, the requirements to make such a showing must be clearly enumerated and should take into account the exceptions set-forth in Sections 399.17 and 399.18.

If the Commission finds that SMJUs are subject to certain rules for portfolio content categories, PacifiCorp and BVES request further information as to how their compliance with these rules must be demonstrated. As the Commission is aware, unless required under limited circumstances,<sup>8</sup> PacifiCorp is not required to file its RPS-eligible contracts, or any documentation associated with its owned-generation, with the Commission for approval as RPS-

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<sup>7</sup> *Id.* at 53-54.

<sup>8</sup> For example, PacifiCorp is only required to submit RPS contracts for unbundled renewable energy credits (RECs) to the Commission for approval in particular, limited circumstances; namely when the REC-only contract is procured solely for California RPS compliance and PacifiCorp seeks recovery of the contract costs. *See* D.10-03-021, Ordering Paragraph 24.

eligible procurement.<sup>9</sup> However, PacifiCorp and BVES are required to file procurement compliance reports. PacifiCorp and BVES request that the Commission take this, as well as the 399.17 and 399.18 exemptions from the content category limitations described above, into account when developing reporting tools and processes for prescribing, reviewing, and evaluating PacifiCorp's and BVES' RPS procurement compliance.

### **III. The Proposed Order Erroneously Interprets Section 399.16(b)(3).**

As noted in the Proposed Decision, the portfolio content category set forth in new Section 399.16(b)(3) includes two negative criteria in that it includes any eligible renewable resource products, or any fraction of electricity generated, that do not qualify under the criteria of paragraph (1) or (2) of new Section 399.16(b).<sup>10</sup> The Proposed Decision goes on to state that if an RPS procurement transaction does not qualify under paragraph (1) or (2), that means that the transaction does not include electricity that meets the requirements for the first and second portfolio content categories. PacifiCorp and BVES agree with this assessment as a plain meaning interpretation of the statutory language.

However, the Proposed Decision goes one step further and interprets the negative criterion (i.e., “does not qualify”) as being something that is “*intended* to cover a quantity of RPS-eligible generation that *was intended* to meet a particular criterion, but for some reason, did not do so.”<sup>11</sup> Including such an intent in the interpretation of new Section 399.16(b)(3) is not supported by the statutory language. The words “does not qualify” should be read only to mean simply that – any eligible renewable resource product or fraction of electricity that does not meet the criterion for the first two content categories. It does not follow that such resource product or

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<sup>9</sup> See D.08-05-029, p. 32; D.10-03-021, pp. 48, 52, and FN 115, p. 77.

<sup>10</sup> Proposed Decision, p. 45.

<sup>11</sup> *Id.*, emphasis added.

electricity must have been or was originally intended to qualify for another content category. PacifiCorp and BVES request that the Commission modify its interpretation of this section consistent with the foregoing.

#### **IV. Conclusion.**

PacifiCorp and BVES appreciate this opportunity to provide comments on the Proposed Decision and look forward to working with the Commission and stakeholders on the implementation of SB 2 (1x).

Dated: October 27, 2011

Respectfully submitted,

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## VERIFICATION

I am a representative of Bear Valley Electric Service, a division of Golden State Water Company (BVES) and PacifiCorp, dba Pacific Power (PacifiCorp); BVES and PacifiCorp are absent from the County of Sacramento, California, where I have my office, and I make this verification for that reason. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and 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 October 27, 2011 at Sacramento, California.

/s/

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