

**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

**JOINT COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
AND RETAIL ENERGY SUPPLY ASSOCIATION
ON PROPOSED DECISION
SETTING PROCUREMENT QUANTITY REQUIREMENTS
FOR RETAIL SELLERS FOR THE RENEWABLES PORTFOLIO STANDARD**

November 17, 2011

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Table of Contents

I.	INTRODUCTION AND SUMMARY	1
II.	COMMENTS.....	2
A.	AReM/RESA support the PD’s determination of the procurement quantity requirements, and urge the ALJ and Commission to move swiftly on related procurement quantity issues.	2
B.	Additional clarity with respect to 2011 compliance is needed.	3
C.	Comments on reporting and verification.	4
D.	The Commission should quickly resolve the status of 2010 banked and/or earmarked RPS volumes.	4
III.	CONCLUSION.....	6
	VERIFICATION.....	7

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I. INTRODUCTION AND SUMMARY

On October 28, 2011, Administrative Law Judge Anne E. Simon (“ALJ”) issued the proposed *Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard* (“PD” or “Proposed Decision”). This PD is the second of several decisions that the California Public Utilities Commission (“Commission” or “CPUC”) will make to implement Senate Bill (“SB”) 2 (1X), which was signed into law on April 10, 2011. This PD establishes regulations that will govern the quantities of renewables portfolio standard (“RPS”) eligible procurement that retail sellers must procure in each of the compliance periods established in Section 399.15(b)(1) of SB 2 (1X). The Alliance for Retail Energy Markets (“AReM”)¹ and the Retail Energy Supply Association (“RESA”)² (collectively “AReM/RESA”)

¹ AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

² RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

submit comments on the PD that support the PD's approach for establishing the applicable procurement quantity requirements for each compliance period. AReM/RESA urge the ALJ and Commission to build quickly on this decision by issuing additional rulings as soon as possible to resolve the status of (i) RPS volumes that were banked as of December 31, 2010, and (ii) RPS volumes that were earmarked for future delivery as of December 31, 2010. AReM/RESA also provide comments on issues related to compliance issues for the time period of January 1, 2011 and December 10, 2011 (the effective date of SB 2 (1X)). Finally, with respect to Reporting and Verification and related compliance materials, AReM/RESA recommend that the Commission have Energy Division use an informal workshop for stakeholder review of proposed template revisions, similar to the approach the Commission uses for Resource Adequacy template updating.

II. COMMENTS

A. **AReM/RESA support the PD's determination of the procurement quantity requirements, and urge the ALJ and Commission to move swiftly on related procurement quantity issues.**

AReM had set forth a specific proposal for determining the procurement quantity requirement for each of the three compliance periods defined in SB 2 (1X). That proposal called for: (i) a 20% average of all retail sales for the first compliance period; (ii) for the second compliance period, a quantity equal to the sum of $[(0.2 * 2014 \text{ retail sales}) + (0.2 * 2015 \text{ retail sales}) + (0.25 * 2016 \text{ retail sales})]$; and (iii) for the third compliance period, a quantity equal the sum of $[(0.25 * 2017 \text{ retail sales}) + (0.25 * 2018 \text{ retail sales}) + (0.25 * 2019 \text{ retail sales}) + (0.33 * 2020 \text{ retail sales})]$.³ This proposal provided the Commission a way to define the minimum

³ See August 30, 2011 Comments of AReM on Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard, pp. 5-7, available at <http://docs.cpuc.ca.gov/efile/CM/142593.pdf>.

procurement quantities for each compliance period in a manner that met the statutory requirement, minimized overall program costs, avoided potential for stranded procurement and provided retail sellers with additional procurement flexibility in the transition from the current 20% procurement obligation to the 33% obligation in 2020. AReM/RESA believe that market rules that provide procurement flexibility will serve to help retail sellers better manage their procurement risks and, as a result, keep the costs of compliance as low as possible. The PD's approach does not provide the same type of procurement flexibility and cost containment inherent in the AReM proposal. But the formulary nature of the PD's approach does provide clarity and certainty as to just what the procurement quantity requirements will be, and for that reason, AReM/RESA understand the PD's intent to provide a straightforward, simple definition of the procurement quantity requirements.

AReM/RESA strongly support the PD's determination that there be no separate compliance obligations for any of the intervening year calculations, consistent with the statute's use of a single procurement volume for each of the 3 multi-year compliance periods. The formulae provided in the PD are straightforward and will help LSEs manage their procurement requirements against their forecast of customer load changes.

B. Additional clarity with respect to 2011 compliance is needed.

The PD concludes that “[u]pon the effective date of SB 2 (1X), the RPS compliance periods set forth in Pub. Util. Code § 399.15(b), as effective December 10, 2011, will apply to all retail sellers.”⁴ As the effective date of SB 2 (1X) is December 10, 2011, the Commission must ensure that renewable contracts entered into prior to that date in accordance with current law will count towards the compliance targets for the first compliance period. The Commission must

⁴ PD, Conclusion of Law 2, p. 20.

provide leeway with respect to contracting language and requirements by allowing entities to transition from the current program and into the new program which becomes effective December 10, 2011. Therefore, compliant renewables contracts entered into prior to the December 10, 2011 effective date should remain eligible for RPS compliance and not result in stranded procurement. Any additional contracting requirements imposed under the new program should only apply prospectively beginning December 10, 2011.

C. Comments on reporting and verification.

The PD authorizes the Director of Energy Division to undertake revisions to the RPS compliance materials as needed to implement the new RPS program.⁵ AReM/RESA suggest that PD direct the Energy Division to use an informal workshop-type of approach (like an internet-based conference call similar to that used by the Commission in the Resource Adequacy program) to circulate proposed template revisions to stakeholders for comment and testing. Given the complexity of these compliance materials and the nature of the changes that will be required, AReM/RESA believe that an interactive approach with the different types of RPS-obligated entities will benefit both Commission staff and the RPS-obligated entities.

D. The Commission should quickly resolve the status of 2010 banked and/or earmarked RPS volumes.

AReM/RESA note that the PD specifically defers to later decisions the host of other implementation issues included in the ALJ's Ruling of July 15, 2011:

Although prompt implementation of SB 2 (1X) is the Commission's goal, the complexity of the new provisions of SB 2 (1X) and the transition between the prior and new RPS requirements make it advisable to look carefully before leaping into the full suite of compliance rules necessary to implement SB 2 (1X).⁶

⁵ PD, Ordering Paragraph No. 5, page 23.

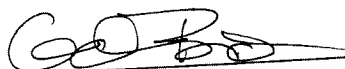
⁶ See PD, page 6.

AReM/RESA understand and appreciate the sentiment expressed above. However, those issues remaining in this phase of the proceeding, particularly the treatment in the new RPS program structure for procurement quantities banked as of December 31, 2010, and the extent to which previously earmarked quantities will or will not be waived, are crucial for retail sellers' efforts to manage procurement decisions now that one year of the first compliance period has essentially passed. Put another way, until retail sellers know whether their 2010 banked volumes of RPS-eligible inventory from compliant contracts will be recognized at full value in the new program, and whether or not previously earmarked quantities must be delivered, the retail sellers' ability to develop procurement plans is significantly constrained. This is particularly true for the electric service providers ("ESPs") that AReM and RESA represent because they do not have the same assurances of cost recovery of stranded costs that are afforded to the investor-owned utilities. If the procurement deliveries under compliant contracts that are now held in the inventory bank are no longer recognized under the new program, ESPs' opportunities to recover those costs are not guaranteed. To the contrary, ESPs must compete to serve eligible customers and procure as prudently as possible to their forecast of customer requirements. In this competitive environment, the imposition of procurement obligations in the absence of clear market rules raises the very real possibility of procurement mistakes – mistakes that will, in turn, potentially strand prior compliant procurement, increase costs to consumers and serve to reduce that supplier's competitiveness. In fairness to all entities having to meet these compliance obligations and making every attempt to procure accurately and carefully for their customers, AReM/RESA urge the ALJ and the Commission to act as swiftly as possible to issue decisions on these outstanding implementation details.

III. CONCLUSION

AReM/RESA urge the Commission to consider the comments presented here when considering revisions to the Proposed Decision. While establishing the formulae for calculating RPS procurement requirements is an important step in the implementation of SB 2(1x), there are critical elements that still need to be determined promptly so that obligated entities can make procurement plans for the 2011-2013 compliance period and beyond. As previously described, clarity regarding the treatment of procurement made through contracts compliant with the program prior to December 10, 2011 will be essential for LSEs to know whether or not past procurement will become stranded. With respect to the updating of the compliance templates by Energy Division, such efforts should mimic the informal, interactive process used in the Resource Adequacy context with workshops to review proposed changes. AReM/RESA look forward to promptly addressing these outstanding implementation concerns.

Respectfully submitted,



November 17, 2011

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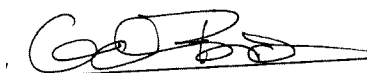
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VERIFICATION

I am an agent of the respondent corporation herein, 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 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 November 17, 2011 at Sacramento, California.



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