BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	))))	R.11-05-005

CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION COMMENTS ON PROPOSED DECISION SETTING PROCUREMENT QUANTITY REQUIREMENTS FOR RETAIL SELLERS FOR THE RENEWABLES PORTFOLIO STANDARDS PROGRAM

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In accordance with Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, and the *Proposed Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program* ("PD"), dated October 28, 2011, the California Municipal Utilities Association ("CMUA") respectfully submits these comments on behalf of its members.[1]

I. INTRODUCTION

The PD appropriately recognizes that the Commission has no "authority or jurisdiction" over publicly owned electric utilities ("POU") regarding the development and enforcement of California's renewable portfolio standard ("RPS") laws.[2] Notwithstanding the clear jurisdictional lines drawn in SB1X 2, it is possible that decisions adopted by the Commission may influence the concurrent California Energy Commission ("CEC") process. For example, textual statements and Conclusions of Law adopted in the Commission's final decision could

[1] The POUs are currently engaged in a separate regulatory process taking place at the California Energy Commission to develop procedures for the enforcement of California Public Utilities Code sections 399.11-399.31, as amended by SB1X 2.

[2] PD at 5, FN 9. With respect to POU implementation of SB1X 2, it is important to note that the statutory languag e addressing "reasonable progress" toward procurement targets is different for investor owned utilities and POUs. *See* Cal. Pub. Util. Code "" 399.15(b)(2)(B) and 399.30(c)(2). Additionally, the statute requires that the governing body of a POU determine what constitutes "reasonable progress" for the POU. Cal. Pub. Util. Code "399.30(c).

potentially influence legal interpretations in the CEC proceeding. Therefore, CMUA recommends that the Commission clarify that it has exercised its discretion to interpret SB1X 2 and implement RPS counting rules appropriate for the investor owned utilities (IOUs) it regulates, and that other regulatory bodies may have different interpretations of SB1X 2.

II. SB1X 2 PROVIDES THE RELEVANT REGULATORY AUTHORITY FLEXIBILITY IN THE ADOPTION OF SPECIFIC COMPLIANCE GOALS DURING THE SECOND AND THIRD COMPLIANCE PERIODS.

SB1X 2 implements a state-wide RPS through three compliance periods:

(A) January 1, 2011, to December 31, 2013, inclusive;
(B) January 1, 2014, to December 31, 2016, inclusive;
(C) January 1, 2017, to December 31, 2020, inclusive.[3]

The procurement requirement during the first compliance period is for each obligated utility to procure an average of 20 percent of its retail sales for the entire three year compliance period from eligible renewable resources. This requirement is clear in the statute.

In contrast, the timing for achieving the procurement requirements during the second and third compliance periods is not stated with specificity, and with good reason implementing entities require sufficient flexibility to design a compliance schedule that will achieve SB1X 2 goals. Parties in this proceeding have set forth in comments a wide variety of interpretations of the SB1X 2 compliance timing requirements for the second and third compliance periods.

For example, the *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewable Procurement Program*, dated July 15, 2011, proposed a single procurement percentage based on an averaging of a straight line trend from the beginning of the compliance period to the end.[4] This approach is

[3] Cal. Pub. Util. Code 399.15(b)(1), 399.30(b).
[4] *Administrative Law Judge's Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewable Procurement Program*, dated July 15, 2011 at 6.

supported by the Sierra Club and the Union of Concerned Scientists.[5] The IOUs and the Division of Ratepayer Advocates also support an averaging based on a trend line, however, they propose a curved line based on a one percent increase in RPS procurement requirements in the first two or three years of the compliance period and then jumping to the ultimate target in the final year of the compliance period.[6] The Alliance for Retail Energy Markets ("AReM") proposes a more complex structure with both a floor, setting the minimum requirement, and a ceiling, procurement above which would result in banking.[7] AReM's floor is based off of a procurement requirement set at the previous obligation for the first years of the compliance period (e.g., 20 percent in 2014 and 2015), which would then rise to the final procurement target for the final year of the compliance period.[8]

Both the Los Angeles Department of Water and Power ("LADWP") and PacifiCorp take a different approach, noting that the language of the statute does not require averaging based off of a trend line.[9] As the PD notes, these utilities argue for a qualitative assessment for determining compliance during the second and third compliance periods.[10] PacifiCorp recommends incorporating "non-procurement factors," such as relative progress from year to year, when determining if "reasonable progress" has been made.[11]

There are additional options that the relevant regulatory authority could consider adopting pursuant to its discretion under SB1X 2. One option would be to look to the utility's performance during a defined "snapshot" period during the compliance period. This time period could be a single year within the compliance period, or some other appropriate period.

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[5] Sierra Club Comments at 3; Union of Concerned Scientists Comments at 2-3.
[6] *See, e.g.,* Southern California Edison Comments at 9; DRA comments at 4.
[7] AReM Comments at 6-7.
[8] *Id.* at 7.
[9] LADWP Comments at 4-6; PacifiCorp Comments at 4-5.
[10] PD at 12.
[11] PacifiCorp Comments at 5.

The key statutory provision that gives rise to this variety of interpretations is as follows:

> For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.[12]

Unlike the statutory language spelling out the clear quantity obligations during the first compliance period, the obligations during the second and third compliance are not specifically mandated in the statute. Rather, SB1X 2 simply requires "reasonable progress" during the second and third compliance periods, toward the 25 percent and 33 percent requirements to be met on December 31, 2016 and December 31, 2020, respectively.

Had the legislature intended to specify a precise procurement schedule during the second and third periods, it could have easily done so, as it did during the first compliance period. Instead, for the second and third periods, the Legislature provided the relevant regulatory authority for each utility with the discretion and flexibility to design a suitable compliance schedule. CMUA believes that this interpretation makes sound policy sense. While the Legislature had clear RPS goals for 2010, based on previous legislation, and a clear long-term goal of a 33 percent RPS by 2020, the compliance framework during the interim periods must be flexible to accommodate changing market and technology conditions.

The Commission is well within the discretion provided it by SB1X 2 to choose among a variety of options for interpreting "reasonable progress" and design procurement requirements for Commission-jurisdictional entities as set forth in the PD. However, for clarity in various regulatory proceedings to implement SB1X 2, it is important to recognize that no single

[12] The language applicable to both Comission-jurisdictional entities and POUs is the same. Cal. Pub. Util. Code §§ 399.15(b)(2)(B), 399.30(c)(2).

approach is dictated by the language of the statute. Accordingly, CMUA requests that the Commission modify the text of the PD to make this important clarification.

III. CONCLUSION

CMUA appreciates the opportunity to submit these opening comments on the PD.

Dated: November 17, 2011

Respectfully submitted,

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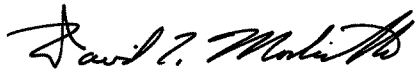
VERIFICATION

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 November 17, 2011 at Sacramento, California.



Dave Modisette
Executive Director